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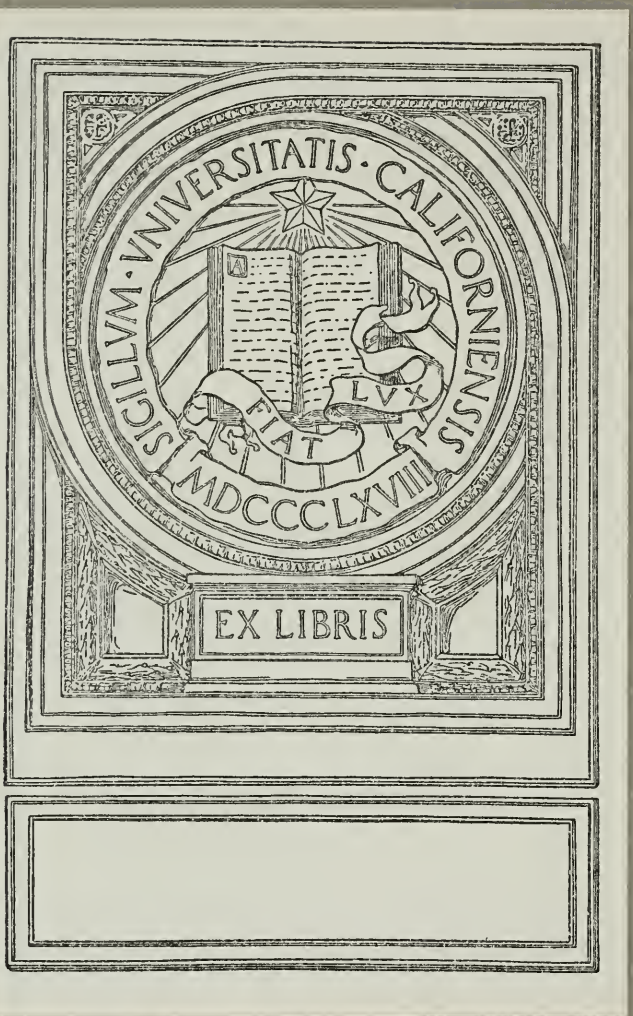
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Chicago and the Constitution.

REPORT TO THE CIVIC FEDERATION.

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OUTLINE OF CIVIC FEDERATION COMMITTEE REPORT.

The report deals with the question of amendment or convention.

It schedules some changes in the constitution suggested heretofore by various bodies, and outlines some new ones for the purpose of finding the widest possible scope of present demands for constitutional changes. It then concludes that these (all of which it does *not* commit itself to recommend), and even many more, are not enough to impel the calling of a convention, a step which it condemns as unnatural to a "going" state. The tolerance toward such bodies, prevalent in most of the American states, it attributes to a "habit" acquired in their formative periods.

It finds the proper function of a convention to be a creative or constructive one, and that unless a state has become so diseased as to need practical re-creation, there is no other use for it. It takes the position that all needed Chicago or local reforms can be had under one amendment, and submits the form of the Chicago amendment last offered in the assembly *simply* for the purposes of testing this question, and affirms that if adopted it would be valid. It affirms, secondly, that such an amendment could validly be placed as a separate and additional article to the constitution; and, thirdly, that it could be added thereto as a separate section.

It names seven lawyers of Chicago to whom the report, and the arguments appended, have been submitted, and states that their conclusions, whether confirmative or negative upon the three propositions above, will be given out when received. In case the views of these lawyers be seriously divergent, it points out a method of having the matter tested in the Supreme Court early in the coming session of the assembly by obtaining an advisory opinion upon the subject, and in time for another step to be taken by the assembly in case of an adverse opinion.

In the contingency that the legal conclusion given by the committee be not accepted as sound, or sustained upon a test, it recommends the plan of first repealing the one-article-at-a-time limitation and then passing Chicago enabling amendments, so called. It shows that under this latter plan, with an extra session of the legislature and a special state election and some other minor inconveniences, the needed Chicago legislation could become consummate, and be in force in the fall of 1905. It schedules the steps requisite to hold a convention, and points out that under that method it will take until 1903 with a special state election or until 1909 in the regular way to witness desired legislation in force.

An appeal is made for thorough study of the subject, and for harmony of action.

The appendix is divided into "Part I" and "Part II."

In Part I the arguments heretofore made by the State Bar Association, and others, against the validity of an amendment of the kind submitted, are treated *seriatim*, and the legal conclusions of the committee are set forth at the end.

In Part II the chief principles upon which the conclusions in Part I are based, is enlarged upon, viz.: that the limitation upon the power of amendment should be *strictly* construed.

It is attempted therein to show how near to the heart of state life lies the power to change constitutions, and hence that limitations upon the power must be subject to a strict, if not doubly strict, construction.

The apology for the length of the report (some 54 pages) is that much confusion has arisen upon the subject, and that one cannot aid much in dispelling confusion upon a subject chiefly technical and many featured, by merely briefing up reasons or scheduling one's own conclusions.

Chicago and the Constitution.

REPORT TO THE CIVIC FEDERATION.

Chicago faces again but with heightened interest the subject of constitutional reform.

A resolution for an amendment to the constitution prepared at the instance of the Civic Federation accompanied by a report explaining its scope, etc., was introduced in the last assembly and reported out of committee; but owing to the complications arising from the state apportionment contest and other causes did not come to a vote.

A resolution for a constitutional convention was offered in the House of Representatives and received the earnest support of Speaker Sherman, but was defeated by a vote of 66 ayes to 45 nays, most of those opposed thereto not voting.

On such a resolution as on one for an amendment, a vote of two-thirds is requisite.

The measure lacked a decisive number of affirmative votes; yet the total vote in favor of it was large.

Since then the subject has been more or less in the air of public discussion. The press frequently treat of it, the necessity of some change is becoming more apparent.

the evils of Chicago seem to be pressing harder and sides are being taken, and clubs and other bodies are pledging their support to one or the other proposed method of relief.

Chicago certainly needs relief through constitutional changes.

The remainder of the state also needs some.

If Chicago intends to move in the matter, her petitioning bodies and citizens should of course unite so far as possible upon one or the other plan.

In making her appeal, she should, however, consider as far as possible the needs of the whole state and the full scope of the subject.

Having gotten right in the method of procedure, she should then recite her ills in chief, the curing of which is blocked by present constitutional limitations, and then move earnestly for amendment or convention as the case may be.

How then unite upon a plan?

A great impediment to bringing about unanimity of opinion on any given question is the readiness with which the ordinary citizen takes his impressions for his opinions and then commits himself to one or the other side of the question.

In these complex times often the plainest truths are hidden from sight by reason of our diversified experiences, and the same old familiar principles are frequently not recognized lying beneath a very brush pile of varied data and involved technique.

A law apparently simple and meritorious may conflict with many other provisions of the statutes or with some clause of the constitution, which is only discovered after

the public has been roused up to agitate it and it has been passed by the legislature.

The confusion is thus added to, and the law is either sustained after an expensive and long delayed court test, or trimmed down so as to effect but a portion of the relief intended, or held entirely void.

All this is waste.

The frequency with which laws are declared unconstitutional is painful. It is, in fact, disgraceful.

It may well be said that a law is not in force "from and after its passage" or from and after the date provided for its taking effect, but from and after it has been declared constitutional at the end of a burdensome lawsuit.

The fault is frequently attributable to the constitution itself with its embargo of useless and baneful mechanical provisions and limitations. But in most instances it could be avoided by pains-taking work and forestudy.

Few bills, or few bills except very simple ones, should be allowed to encumber the dockets of the legislature without being accompanied with certificate of counsel as to their validity. Possibly the legislature should have a legislative counsel corresponding to "parliamentary counsel," an adjunct of the British parliament. In most instances a bill should also be accompanied with a report or synopsis of the evil to be remedied and the practical bearing of the provisions of the bill upon other statutes and its relation to kindred subjects, etc. This might not be necessary if we had a simple constitution and were free from the mechanical limitations and directions which are the chief features of our present one, and if our volume of statutes were one-third as great as it is.

The constitution makers of 1870 recognized certain then prevalent ills as grave ones and tried to cure them

by provisions which they inserted in that instrument. In even many trivial matters of method they legislated sometimes to almost the merest detail.

The Legislature and other public bodies and servants had long and often acted dishonestly and extravagantly.

The convention delegates hence had become accustomed to look upon public officers as public enemies. And having tied the hands of such officers in many particulars and laid certain heavy prohibitions upon them, they retired from their labors and rubbed their hands with almost demoniacal glee, and all voted the new constitution "good."

And so confident were they of the permanent and staying quality of their work that they attempted to fetter subsequent generations from improving upon it, except by the assumed slow process of amending but one article every two years.

Frankly speaking, the legislation of these men was good legislation, in the main, and did not badly suit the then condition of affairs. Had it not been so the yoke would have galled us earlier and in many more spots than it has. But the trouble is that many conditions then prevalent have changed since, and none of such legislation has.

The same attitude of distrust displayed in the convention has been habitually assumed by the Legislature towards municipalities and other public bodies and agents as to which it has legislated. Laws are loaded down with a lot of directory provisions and limitations, useless in themselves, except temporarily to head off some particular form of vice or to emphasize in words what is a plain duty on the part of public bodies or officials.

Thus the Legislature is fettered heavily by mechanics in the constitution, and the Legislature in turn ties the hands of public agents and officers of its own creation with a volume of limitations upon methods of conduct and procedure.

Legislation in the constitution and mechanics and method in our laws fetter our energies, load us down with a volume of complexity, multiply lawsuits, and cause paralysis and waste.

To this add the burdens of partisanship, favoritism, prejudices and class agitations, etc., and we can easily discern a succession of finely ribbed sluice gates through which trickle tiny streams of good to the great reservoir of public need.

It is highly important, then, that we agree upon a method of procedure to obtain relief.

To this end, therefore, the whole subject should be well considered and each of the two available plans discussed and a "balance" drawn.

While to sometimes disagree is natural, yet we ought first to make an effort to agree. Disagreement after a thorough effort to agree is justified; before such effort is made it is inexcusable and damaging, and sometimes baneful.

If the subject is approached free from any hobby spirit or prejudice, and exhaustively treated and patiently studied, it may be that apparent disagreement will melt away.

In a report to the Civic Federation accompanying a draft of amendment submitted by one of this committee and another several years ago, the opinion was given that the provision relating to amendments was not a

serious menace to a radical and prompt constitutional reform in reference to Chicago and Cook County. That amendments and a number of them widely divergent in character could be submitted by the General Assembly for a vote at one and the same time, provided they all be placed under or purport to amend but one article; to substantiate this the case of *Wilson* v. *Board of Trustees,* 133 Ill., 433 (the Sanitary District case), was cited and certain observations suggested to sustain the position taken.

Since this report was made several parties in reports and addresses upon the subject have questioned the soundness of this conclusion or disagreed with it. In an address at a law club banquet Wallace Heckman, Esq., of the Chicago Bar, severely criticises it, Speaker Sherman thinks its conclusions are wrong, and a committee of the State Bar Association has lately made a report to the same effect.

All of the advocates of the "convention" plan admit that it should not be adopted if an amendment can accomplish the results desired.

They, however, believe it will not and so in order that delay should not occur by reason of any amendment being held null and void, they advocate a convention.

If, however, such of our friends can be convinced that the amendment theory *is* sound and can be shown to be so, then clearly an exhaustive effort should be made to prove it to their satisfaction and that of all reasonable men.

It was thought, therefore, that economy and harmony would be subserved by a thorough and exhaustive treatment of the legal scope of the amendment plan; and the committee submits as an appendix hereto an argument in

detail to sustain the conclusions given, entitled "The Scope of Amendments to the Illinois Constitution."

With the conclusions therein to the effect that the form of amendment last submitted by the Federation to the Assembly would be valid if properly proposed by the Assembly and adopted by the people, the other two members of this committee agree.

But herein we seek to give the practical considerations which bear upon both the "amendment" and "convention" plans, and to make some attempt at impartial conclusions.

We are all seeking to get constitutional reform; we desire the best, safest and speediest method; to find this the subject should be studied as a scientific or objective question is studied. To "take sides" for the mere sake of holding to a prior impression or opinion or of working up a fight and having something to "champion" is mischievous and undignified. If persisted in it becomes childish and futile.

The first and chief question is: Would an amendment sufficiently comprehensive and broad enough in scope to afford full relief for Chicago be a valid one? This is a purely legal question, and, as said above, it was thought that the arguments and opinions thereon would be better placed in a separate document. The principal conclusions deduced from the said argument in *extenso* are, however, in place here, and we give the following:

1. The only limitation upon amendments which may be proposed by the legislature at one session and voted upon by the people at one time is that they shall purport *to amend* (*or change in form*) but one article of the constitution.

2. The amendment submitted to the assembly by the Civic Federation in form as annexed to the appendix hereto and purporting to amend Article X, "Counties," if properly proposed by the assembly and adopted by the people would be valid.

3. Or such an amendment could be added as a "separate section" of the constitution with no danger of its being held void; or

4. It could be inserted in the "Schedule" with equal safety (although it would be oddly placed in such a case); or

5. It could as well be embraced under a separate article.

We have every confidence that these conclusions are sound. Yet upon a matter as vital as this, we should be both careful and conservative. And therefore we propose that the said arguments and conclusions should have the test of study and careful scrutiny by some of the ablest of our Chicago lawyers in order that the course which may be adopted will be pursued in the confidence that it will not be void of ultimate results. To this end we have submitted them to Judge Simeon P. Shope, formerly of the Supreme Court of Illinois, now of the Chicago bar, Judge George W. Wall, for many years justice of the Appellate Court for the Fourth District, and a member of the constitutional convention of 1870 as well as that of 1863, and who is now practicing law in Chicago, Thomas A. Moran, John J. Herrick, Chas. H. Aldrich, John S. Miller and James DeWitt Andrews (the law writer), Esqrs., all of the Chicago bar. Their answers, when received, will be submitted to the Federation.

It is said in the appendix hereto (p. 53):

"The annexed draft of amendment is the one last offered in the Assembly in 1891.

"We concede that it has too much 'mechanics' in it.

"But these were dictated by the influences and conditions with which the Federation was beset, and accepted under protest. We hope that some of these may finally be dropped; and that a new and simpler draft embodying the main features be submitted.

"But for the purpose of testing the specific question of whether or not varied or complex provisions can be validly placed in amendments submitted at one session the said annexed draft is probably as good as any other."

We adopt this suggestion and make now no recommendation as to the form of amendment; and hope the one to be adopted will be much simpler than the former one.

There is recourse also to another plan of obtaining convincing and authoritative assent to our conclusions, set forth in the appendix; and this should possibly be pursued if the conclusions of the examining counsel should not be uniform and emphatic.

Some state constitutions provide for opinions to be given by the supreme court of the state to the legislature upon its formal request, as to the constitutionality *vel non* of certain measures which it is proposed to pass or which may be held under serious consideration by the legislature. Such opinions have frequently been given by such tribunals, usually with the caution that the court means to act only in an advisory capacity, and reserves the privilege to decide differently if the proposed measure should become a law and upon an actual test the court should be convinced that the advisory opinion were wrong. Fre-

quently a law in its actual working will display defects not anticipated before its passage. And in a mere question thus put, the court has not the benefit of counsel on the two sides of the case.

But in a case like the present one no reason is perceived why a court could not as easily pass upon the legality of such a provision before the legislature passed it as afterwards. If it were passed and voted upon by the people, it would in all probability be tested before it were actually put into effect. So the court would be as well fixed to deliberately pass upon the question at one time as another. In such case, as in others, an advisory opinion only could be asked for, but it would be all that could be desired, and would fully serve our purpose.

And as to the assistance of the counsel, the court could appoint counsel to represent each side of the question, and thus have the benefit of full argument.

Our constitution does not have a provision of the exact nature above mentioned. But it does contain the following:

> "All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June, of each year, report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws."

This mandate has hardly ever, if at all, been observed; the court has usually been overburdened in handling the specific cases submitted to it in the usual way; and there may be other reasons why they have not seen fit to act in such advisory capacity.

In a case as important as the present one, however, it is not perceived why the court would not in this instance advise the governor as to the scope of the said amendatory provision or the validity of the proposed amendment; he in turn to transmit the opinion to the legislature.

This could be done on the court's own motion upon being prompted thereto by Chicago's petitions therefor in the most informal way. Or a motion could be made for leave to file in court a petition therefor, and if agreeable to the court, counsel could be appointed to argue the matter and a time set therefor.

The object of such a procedure would be to save calling a constitutional convention, which would occasion a prolonged and thorough agitation of the whole state, and the expense of a special state election, together with the usual general public expense and inconvenience which go with it; and such an object is sufficiently momentous and exceptional to invite the help of any of the state's constituted bodies in subserving it.

We suggest, therefore, that in case there continues any well-defined divergence of views as to the legality of an amendment of the kind heretofore proposed by this body, steps should be taken to get the opinion of the Supreme Court judges upon the question for the legislature.

Or, if deemed advisable these same proceedings could be first taken in our local Circuit or Superior Court, to be heard by one of its ablest judges, or by three or five of such judges and their conclusion submitted by way of formal suggestion to the upper court judges.

In case the Supreme Court should sustain the opinion and conclusions furnished the Federation, the most cautious and timid would be quieted and appeased.

We must, however, remember that in these times there are a vast number of hastily formed or "street" opinions afloat upon all important questions. Almost every vital legal issue is more or less confused by them. But we would scarcely ever get substantial or definite reform if we hesitated in any given course of action because of them.

The public's business is still habitually treated by the average individual as secondary. Matters of purely legal or technical nature, and of most vital import, are treated with amazing deftness and speed at banquets, social conferences and mass meetings. Lawyers, and those who are not lawyers, and patriots of all classes, will venture and publish an opinion upon the legal phases of Chicago's consolidation plan, and the scope of constitutional amendments, etc., who will not take the time to read the constitution or one-tenth of it or to read a specially prepared opinion and report upon the subject. Some time last spring a leading morning paper published the legal opinions of a dozen members of the Chicago Real Estate Board upon the question whether or not the necessary relief could be embraced in one amendment to the Constitution!

When the Federation proposed the "township evils" bill at the last session of the assembly, a printed report made by the drafters of the bill, explaining its scope and referring to decisions to prove its validity was handed each member of the said body. The report was but nine pages long, but had cost several weeks of closely applied labor. There were, however, nine attempts by various members to amend the bill or substitute others in its stead. At least five of these were unconstitutional for reasons specifically pointed out in said report. They were all after much confusion and persistent work gotten rid of. But

the hardest task of all was to persuade the parties furnishing made-over-night drafts of amendments or substitutes to read the report, or look at the decisions affecting them.

Legions of banqueters met several years ago to discuss Chicago's legislative needs and "resolve" in respect thereto; yet when the amendment was pending before the assembly, and the township and consolidation bills, as well, half a "baker's dozen" of citizens could not be persuaded to go to Springfield to urge the passage of such bills.

Good work even in days of simple constitutions, and fewer laws, was never done easily; and in these complex times the same truth is more apparent than ever. And the time is at hand when our patriots should all discover that there is some comfort in working in quiet for one's community, and out of the glare of the footlights and public prints; that time and skill are vital to perfecting its systems of law and economy; that the charm in such service lies more in its *accuracy* than in its earnestness.

If in handling such grave and important matters we can get rid of banquet opinions and mass meeting skill, not the least of our burdens will be rolled away.

There is a well defined tendency upon the part of many to look upon a constitutional convention as a natural and logically periodical event. The seriousness of the thing is not easily comprehended. Your average lawyer, or well-read business man, takes up the constitution and reads it through or scans it over. Seeing here and there unnecessary and hampering provisions, and adding the result of his cursory examination to his experience with public affairs and his impressions formed from speeches

and newspaper agitation, he schedules such parts of said instrument as he thinks needs changes. In most instances he probably does not even hastily read the constitution through, a thing, which on account of the inordinate length of said instrument, could well be excused under other circumstances. Whatever the methods or source of his impressions, however, he views the project of changing the constitution as quite a simple matter; and at once a conceit springs up within him that he can, as with chalk and scissors, mark off its tuberous or unseemly projections, and clip down to a perfect pattern.

But such citizen must be warned.

In the first place he might not be content to lop off awkward features and let the perfect pattern remain. Even the State Bar Association committee, who supposedly expended considerable time upon this subject, is not content with specifying many faults of the constitution and doing it well, but it follows many of them with suggested planks for insertion in the constitution. These would be just as much out of place in that document as the ones criticized. They would be just as decidedly "legislation" or "mechanics." After recommending that all judges should be required by the constitution to be "learned in the law," and several other useless or barren provisions, it mentions several of what it is pleased to call "affirmative governmental principles," to be inserted therein. One of these is, "that civil service should be extended by constitutional provision to the subordinate positions in all state and county offices and institutions, and should be made compulsory instead of optional, as applied to the cities of the state."

A declaration in the constitution that *merit* alone is to control in the appointment to public service would not be

out of place. It is a reproach to American citizenship that such a thing should be necessary. If, however, it will help to open the eyes of the American people to the simple fact so persistently ignored that they cannot serve two masters, viz.: the party and the state, or that practiced favoritism is a draft upon the lifeblood of the state, or to other cardinal truths to which the public are blind, it would be a good thing.

But a provision compelling the use of civil service *boards* in *all* subsidiary departments of *all* state, cities and institutions would be out of place in the constitution and might become a pernicious thing.

The civil service *principle* is correct. But had we in public office a pervading spirit of honesty and rigorous absolution from the curse of partisanship and favoritism, civil service *boards* would be a useless and cumbersome annex to our municipal departments. They are a defensive institution; needed now to preserve us against effects of prevalent vices. Any one who works against them earns a well founded suspicion of having personal or other unhealthy motives. But when efficiency in public service shall be the rule, and we shall have ceased to house the senseless arch-fiend of "partisanship," such boards may not be needed any more than they are needed in a well organized army. One who should predict that this day is soon at hand would be thought bold and recklessly optimistic. But one who would do that which would necessitate a state election to dispense with such bodies if and when they shall have become a useless encumbrance, could not be called a constitution maker.

Then, again, your citizen of the chalk and scissors skill must recollect that many of his suggested reforms probably have not the merit which he seems to see in them. He will find that many of them are not new. And should

he take the trouble to glance over old constitutional debates, he may find some of them well discussed and rejected for valid reasons which never occurred to him. Others, he will find, have been tried in this or other states and abandoned.

When he comes up against others as competent as he in the arena of convention debate, he will find his apparently simple subject to have far wider ramifications than he ever dreamed of; and unless born of the obstinacy of the marplot and obstructionist, he will find himself at sea in striking balances, *pro* and *con* his petted measures and his mentally fathered system will look sadly marred.

Said Mr. James Bryce, in commenting upon the success of the Federal Constitution, it proves the rule "that everything which has power to win the obedience and respect of men must have its roots deep in the past."

Said the master historian, Hume: "To balance a large state or society on general laws is a work of so great difficulty that no human genius, however comprehensive, is able by the mere dint of reason or reflection to effect it."

Then, even if the ideas of our aforesaid citizen should perchance be sound *in toto*, he must recollect that his chance of getting them accepted by a body of men, considerable in numbers, would be remote indeed. And he would not, of course, expect that the work would be delegated to him alone.

The result of such a body is largely that of compromises. The men who so readily have urged the calling of a convention, might be interested to glance over the debates of the convention of 1870. No one believes that it would now be possible to get a better body of men together for such a purpose. We think the chances to equal it very "slim" indeed.

Yet, that body was swayed and racked and confused many times by internal dissentions. It was subject repeatedly to spasmodical pressure from without, and was deluged with petitions and delegations from nearly all classes and interests throughout the state. Several times the conventions was on the point of breaking up in despair, as quite a few similar bodies have done in other states.

If one peruses the proceedings of that body, he will not wonder why it is that surviving members thereof so uniformly deprecate the calling of another convention.

Said Mr. Webster, in the Massachusetts convention of 1820, which simply amended the then existing constitution, opposing the adoption of a provision for calling a future convention:

> "With the experience we have had with the Constitution, there is little probability that, after the amendments which shall now be adopted, there will be any occasion for great changes. No revision of its general principles will be necessary, and the alterations which shall be called for by a change of circumstances will be limited and specific."

The Illinois Constitution needs more than "limited and specific" amendments. But by far the most important part of it is its general principles. And no matter how much "mechanics" it is burdened with, the natural and conservative plan of procedure is to hold to what is vital while lopping off the deadwood, whether we hew with vigorous and frequent, or only light and occasional blows.

The men best fitted to be entrusted with this important work, are the men who will approach it most cautiously, and take no more responsibility than the occasion demands.

This kind of work should be deliberate and painstaking. Debates, even by the best lawyers and thinkers, is

not enough. It is a valuable method when preceded by painstaking investigation, by the methodical collection of data and items of experience, by suggested drafts in pursuance thereof, and by printed arguments covering the natural scope of the subject.

The natural and economic method for amending the constitution of Illinois is the "commission" plan, which usually adopts these methods. Such bodies have been employed in a number of instances within the last thirty years by various states. The personnel of such commissions has usually been high, indeed, and their work of an equally high and excellent order. In several instances their work extended to reconstructing the constitutions, and was not accepted without material changes. But this was the fault not of the work itself, but principally of the narrow and partisan spirit which pervaded the assemblies receiving the reports.

Jameson recommends the plan of a commission as peculiarly adapted to "amendment" projects, the commission to frame its amendments and to submit them to the assembly, and the assembly to propose them to the people to be voted on separately.

Were the subject of constitutional relief for Chicago, or rather the drafting of measures therefor, a comparatively new one, we should probably have to submit to the commission plan here; and in fact possibly ask for its adoption. But said subject is not new. Chicago has suffered from the present constitution from the very time it was adopted. The justice and constable evil was prevalent then (though not so extensively) as it is now. It has suffered from the township evil from the very "start," so much so that as early as 1874 a well defined agitation for their abolishment sprung up, and several

prominent lawyers framed up legal opinions in respect thereto.

So far as Cook County was concerned, its chief feature was an attempt to regulate by inexorable code at once the metropolis and the swamp; and at no time has the garment fitted even imperfectly the municipal corpus of the local public. Suggestions and counter-suggestions, communications, resolutions, editorials, reports of city and county officials and departments, committees of clubs and bar associations and pamphlets galore have for nearly thirty years last past been turned out and eagerly canvassed by a public burdened and therefore interested.

With a view of placing all this thought and labor to account, the Civic Federation, some four or five years ago appointed its Consolidation Committee of one hundred from the various organizations and interested bodies, to consider and frame a constitutional amendment. This committee, of which Judge Tuley was chairman, and its sub-committees had frequent meetings and did much hard work. The result of their labor was an amendment which professedly was not fully satisfactory to them, but was at the time deemed to be the best that the various interests would be likely to agree upon, and to go as far in the way of relief as one amendment could go. The amendment was submitted to the legislature of 1899, but the resolution for its submission failed to pass. It was upon further consideration of said committee abandoned, and a new sub-committee appointed to draft a new amendment and report thereon. Such new draft, accompanied by a report, entitled "Constitutional Changes in Cook County," was drawn and submitted and after further scrutiny by said committee and some changes therein was adopted and submitted to the legislature. Upon objection at the hear-

ing in committee, made by certain parties from the "outside towns" the amendment was further changed in several respects, and a "substitute" amendment prepared in committee embodying such chances. It was then "reported out," but for causes mentioned elsewhere did not come to a vote.

If this amendment as originally offered in the Assembly, or the "substitute" therefor, or a new one to be drafted improving thereupon be adopted by this body and others acting in conjunction with it, and a report accompany it, explaining the scope of such proposed amendments, and proving its various features and its merit, and these be approved by the public and voluntary agencies in Chicago who have seriously studied the question and been interested in it, and the work shall have been done *thoroughly*—a commission for such purpose will be unnecessary and superfluous.

In such case the work of a commission will have been performed in advance, and by the same means and methods usual to such a body.

So far as constitutional amendments applicable to the whole state are concerned, if there be any considerable demand for changes, as there seems to be, it seems to us that a small, able and hard-working commission should be appointed by the legislature to report upon such changes as it shall deem advisable.

Or, if the State Bar Association, or some other competent organization or agency will seriously undertake the work, and appoint a committee therefor, and give the result of its effort in the way of suggestion to the legislature, a great impetus would be given the movement for such needed relief.

But Chicago's ills are peculiar to herself, and there is

no reason for requiring her to wait until matters are adjusted which affect her only as one of the constituent communities of the state. Her relief must, in the nature of things, come soon. It is conceded throughout the state that hers is the sorest spot upon the body of the state; and if so, it is but right that she have the first attention.

In closing this part of the subject, we have to say lastly, that if perchance the legal opinion furnished herewith (affirming that the amendment plan is feasible, that "amendments proposed at one session" can validly be made wide enough in scope, etc.), be not accepted as sound or sustained upon a test, we favor the plan of first repealing that portion of the amendment article of the constitution which relates to the one-article-at-a-time limitation, before passing any other amendments.

It would be far better to get full "constitutional" relief in four or five years, than either to accept the slim, disjointed provisions which we could possibly have passed biennially, *or* to call a convention and throw our whole constitution into hotch-potch. Yes, far better.

We do not know how this will strike the average friend, impatient as he justly is to see the needed changes consummated.

But a long wait rather than take such a serious and unnatural step is, in our judgment, a far lesser evil.

Chicago could lend her energies towards assuring the submission of the repealing clause by the next assembly, and, if the same were proposed by that body, towards getting out the vote of the people thereon, in order that a favorable vote should be assured, and hence that no time would be lost in removing the chief ban of progress along this line.

Immediately after the adoption by the people of this repealing amendment (which might provide for a special election of the people to pass on *further* amendments), a special session of the assembly could be called for the purpose of proposing such Chicago amendments as were deemed necessary. These could be submitted by the assembly to the people at a special election to be called immediately afterwards. At this same session of the assembly all needed *legislation* could be passed to go into effect *in the contingency* (probably well assured) that the proposed constitutional amendments be adopted. Or, if there were legal impediments in the way of this (and none such occur to us), they could be made, as they probably would be, to depend upon a vote at the next city or county election, as the case might be. If by chance the *amendments* had prior to such election failed to pass upon the state vote, the so-called local measures could then be voted down by the people affected by them; or the local officers could decline to call the local election because of a total failure of its object.

If either of these two latter plans for speeding legislation were not adopted, a special session could be called immediately *after* the adoption of the Chicago constitutional amendments for the purpose of supplementing these with the necessary legislation.

If it be said that these special sessions are costly, and that the state might be reluctant to so use the funds necessary therefor, it can be answered that there ought to be some way to demonstrate to her legislature that giving early and quick relief to one-third of her citizens would be one of the best investments she could make. And Chicago should have enough liberal-minded able citizens to pay a part of this expense, or, rather than let its whole scheme fail, the whole of it.

Under this plan three years ought to mark the limit for witnessing the desired changes as a consummated fact.

If forced to adopt this method, the work of framing the bills for required legislation should not wait until after the voting upon the constitutional amendments required, but should be taken up early and diligently pushed to fruition. The most thorough arguments in favor of the frame of bills suggested should accompany them. These, and with all the necessary data, etc., should be sent in advance of the special session to each member of the legislature with special appeals for their perusal, so that when the assembly met the groundwork for early, yet thorough, consideration and prompt action will have been laid.

To summarize the steps to be taken under such a plan

1st. Repeal that part of the amendatory article of the constitution which forbids more than "one article" amendment at the same session, and provide in such repealing amendment for *permitting* a special state election on constitutional amendments.

This change could be accomplished at the election for members of the assembly in November, 1904.

2d. The legislature at its session in January, 1905, could submit to the people all enabling amendments deemed advisable, and call for a special election thereupon in the early part of 1905.

3d. The assembly could at that same session (viz.: January, 1905,) pass all needed Chicago legislation, to go into effect *in case* the enabling constitutional amendments should pass, or to be voted on by the people of the district affected *after* the date of the said state elec-

tion; or the assembly could, after submitting the constitutional amendment, take a recess until after the state election, and then pass the requisite "consolidation" or "charter" provisions to be submitted to the legal voters in the early fall of 1905.

If this second plan were promptly and successfully pursued the fall of 1905 would witness as consummated the local legislation desired. Under the first and present plan it will take until that time. But the other will take one more state election, and that a special one, and two contests in the legislature instead of one and much more inconvenience to all concerned.

This plan of first repealing the present amendment provision, before adopting any Chicago enabling amendments, so-called, is thus outlined here only for the purpose of rounding out the subject in hand. It is not believed that there is enough doubt about the first and former plan being valid to render a resort to it probable. Such plan, if deliberate and studied opinion upon its validity be conflicting, could be tested in the Supreme Court at its session in the coming February, and if it failed under the judicial scrutiny of that body, the plan herein secondly outlined could still be initiated and adopted during the then session of the assembly.

In any event, the necessity of a state convention is thus reduced to a ridiculous minimum.

What changes in the present constitution are necessary and advisable?

From the report of the State Bar Association, Speaker Sherman's address to the Real Estate Board, the report of Ex-President Healey of the County Board, the memorial of the City Council addressed to the legislature

in 1901 and one or two other suggestions in the public prints, we collect the following as advocated changes:

1. The abolition of what remains of the township government in Chicago and other cities in the state. (The law passed at the last legislature and in force now does not entirely do away with them, but goes as far as the present constitution allows and is aimed to reduce the erstwhile township evils to a minimum. Most or all of what is left of such townships is, however, a useless encumbrance.)

2. The abolition of justices and constables in the City of Chicago and allowing the substitution therefor of local district courts.

3. Radical changes in the revenue provisions, such as

(a) Raising the debt limit of the City of Chicago so as to permit local improvements to be made from the general fund, and provide for the construction of bridges and other extensive public works, and to remove thereby one of the chief practical obstacles to consolidation.

(b) Extension of time allowed on municipal bond issues from twenty to fifty years.

(c) Doing away with the State Board of Equalization and allowing state taxes to be raised and apportioned amongst various local municipalities in proportion to the revenue which they raise for local purposes; or allowing other new methods of apportioning state taxes.

4. The consolidation of all local municipalities in Chicago retaining the county government only for court purposes and the execution of process by the sheriff

5. Allowing Chicago to frame her own charter.

putes.

6. Providing for compulsory arbitration of labor dis-

7. Providing for the ownership and operation of public utilities by local municipal corporations.

8. Revision of the article on judiciary, such as

(a) Abolishment of Appellate Courts and changing the jurisdiction of the Supreme Court and allowing its division into different departments, such as law, equity and criminal, allowing thus but one appeal.

(b) Providing for appointment of Supreme Court clerk by the judges thereof, instead of election by the people at large.

(c) Abolishing the provision limiting Cook County to but one of the seven justices of the Supreme Court.

(d) Allowing more than one County and Probate Judge for Cook County.

9. The repeal of the provision that requires donations of lands, money and property for school, college, seminary or university purposes to be applied to the objects designated, in order to permit such donations to be applied to public institutions generally and where most needed.

10. To amend the provisions in regard to right of trial by jury so as to allow less than twelve to return a verdict.

11. Repeal of the provision in regard to minority representation in the legislature.

12. Abolishing County Courts in the Country districts of the state and allowing the consolidation of County and Circuit Courts.

A few of these provisions are embodied in others, or would be made permissible by the adoption of others. Some, as for instance that one as to arbitration of labor disputes, are not necessary; as arbitration, compulsory or otherwise, so far as practicable, is within the police

power of the state. Municipal ownership, also, is permissable without constitutional changes. Several of these propositions, while legally possible, may, however, be impracticable on account of sundry mechanical limitations in the constitution.

There are also a great number of suggestions (which we omit) for new affirmative provisions in the constitution that are frequently agitated, but which the proponents do not stop to consider are charged with the vice of "mechanics" or "legislation," the very thing from which we are now suffering. To adopt them would simply be to repeat the chief blunder of the constitution makers of 1870.

Certainly at first sight the list above looks formidable.

But it is by no means complete. We will not attempt to schedule all provisions in the present constitution, in addition to those above, which are obnoxious to one's logical and economic sense. Many of these while not properly a part of a constitution, entail no special public inconvenience at this time. But we can add quite a few to the above, which are thought to "chafe" the body politic, and all of which prompt serious criticism. Changes suggested by one of the members of the committee are the following:

13. The provision requiring local court clerks to be elected—a useless expense to the people.

14. Extending the term of members of the House of Representatives to four years or more. (Two year elections are entirely too frequent and a waste of the public's time.)

15. Reducing the body of the state legislature of over 200 members to half that number, or less.

16. Allowing state senators or representatives after the first term of service to be elected from other districts than those in which they reside.

17. Less stringent limitations upon formation of new counties, or changes in the boundaries of some existing counties.

18. Abolishing the provision that the fees of township officers shall be uniform in the class of counties to which they belong.

(Had it not been for this clause the new township law in Chicago could have been so drawn as to dispense with township collectors' fees, and thus saved Chicago $40,000 or $50,000 per annum.)

19. Repealing the provision against the sale of the Illinois and Michigan Canal, unless submitted to a vote of the whole people of the state and approved by a majority.

(The cost of the election and the value of the peoples' time in discussing and voting upon the proposition would in all probability exceed the selling price of the canal.)

20. Changing the provision prohibiting the placing in jeopardy twice for the same offense, where the necessity of a second or further jeopardy is caused by the act of the accused himself. (Such amendment to be properly safeguarded against possible oppression.)

21. The abolishment of imprisonment for debt in actions founded on torts.

22. Repealing the limitations upon the passage of laws as to titles and "one subject," and covering the matter by a standing rule of the legislature or a permanent policy in respect thereto.

23. Removing the ban upon local or special legislation as to county seats and various other subjects.

We repeat now with added emphasis that the list looks formidable. There are no doubt others of more or less importance. Besides these, there are a number of provisions which, though harmless, are a reproach to the state's intelligence; such as the one which prohibits school trustees, directors, etc., from being interested in any school contracts. This simply means that these officers must not commit dishonesty. Logically, such a cause, if it specify one, should specify all public officers, which would make it long enough to form a constitution by itself.

But while this list of suggestions is large, it does not, with the exception of five or six, or, for instance, those to jury trials, to members of the assembly, to placing in jeopardy, etc., specify very fundamentally vital changes. And over the adoption of most of these there would be much wrangling and disagreement in any body of men called to pass on them. The reader hereof has no doubt already condemned some of those in the second list. But there is just one of the big points, viz.: that those items which seem clearly meritorious to some will be condemned vigorously by others, and hence the demand for change is never so great as it seems to one or a few. Our small committee of three do not agree upon all of them. As said elsewhere, by far the most important part of the constitution is the bill of rights and the general frame of government; and if this sum total of all these items be compared to the whole body of the constitution, it will indeed seem to be but a small portion thereof.

The principal argument of the advocates of a convention is that because so many changes are needed, and because the amendatory process is slow, therefore the only relief is in a convention at which all the desired reforms can be provided for.

Does it, however, follow that because many reforms are necessary, therefore the convention remedy is the only escape?

Says the special State Bar Committee in a special report made this year: "The calling of a constitutional convention is concededly a serious step, which should not be taken except for urgent reasons."

Says Speaker Sherman: There ought to be no convention "unless the necessity is clearly established." He also says: "The state constitution regulates and protects rights which existed before it was framed, rights and principles attending or that are growths. * * * We understand, therefore, that even constitutions ought to develop. The currents of active life may run beyond or away from them. * * * All future generations cannot agree to be wrapped in the garments devised by the dead." He then recites the objections usually urged against calling a convention and the fears expressed by many, viz., that such a body would be tainted with faddism, would probably be tempted to confiscate private property, would be subject to corporation influence, would indulge in untried and far-reaching labor provisions, etc., etc. He then proceeds: "If these reasons are conclusive now, they will be equally so fifty years or a century from now. Have the people been bereft of reason? Have they lost the capacity of self-government? We must have faith in the never-failing common sense of the American citizen." He then states from experience that the amendment method is extremely slow on account of the fact that a number of amendments are introduced at each session, each one of which is supposed by the friends thereof to be imperiled by the submission of any others, on account of the supposed limitation.

These arguments seem far from conclusive.

If it can be established to the satisfaction of the legislature that one amendment does *not* necessarily imperil the others, if all are placed under a specific article, or under a new article to be framed, and that all amendments or sections of such article could be voted upon separately by the people at large, the last objection of Mr. Sherman will, of course, be removed.

But if the present caliber of our legislatures is such that mutual jealousies and prejudices and rivalry of different interests keep measures of surpassing import from being adopted, it is hard to see how such fact can be used to further one plan for making constitutional changes and against another. For such changes have to be supplemented by legislative action, and we are in any event brought ultimately to the door of the legislature for relief. And if we cannot use present constitutional provisions on account of legislatures being narrow, ignorant or venal (the state of public interest being such as to permit such a condition of affairs) it would seem to be a most inopportune time for upsetting all of the fundamental law of the state, or inviting wholesale attacks upon it.

It is conceded all around that the present power of partisanship in the state to-day prohibits us from getting better legislators. Is there any warrant to believe, then, that the men to be chosen for the new convention would be selected without any reference to partisan interests? Would the kings of the caucus and the bosses of the primary temporarily suspend their influence or yield their scepter of authority in this special instance? It must not be forgotten that the so-called "plums" given out by party dispensers of public office are not alone financially remunerative offices, but also posts of honor, and mem-

bership in a constitutional convention is of the latter class. Nor must it be forgotten that such members are required to be elected by state senate districts (two to each district), and in the same manner as state senators. When we recognize the caliber of the latter usually elected in many districts, we cannot deceive ourselves into thinking that a convention thus chosen would consist of uniformly satisfactory "timber." The professional corporation "grafter" would no doubt be much in evidence in such an election.

"A constitution," says our able speaker, "ought to develop."

Ought it then to develop by extinguishing itself periodically and then being reconstructed, it being hoped or expected that each succeeding instrument thus created would be far better than the preceding one, and that the progress of human intelligence and experience would finally enact the perfect creed? Such a process is not "development." It is experimentation; and this upon a very vital and far-reaching matter.

The "never-failing common sense of the American citizen" is all well enough when that individual is put to exercise that common sense upon a single issue in which he clearly understands that a vote "aye" means common sense and a vote "no" an absence of it. But such a case is not this one. Men differ as to their ideas as to how to express principles and as to what are best methods in government; and the common sense of the body politic is not yet free from passion and prejudice and partisanship and venality. As a composite quantity it has suffered rank evils and practices to spring up and at times threaten the very existence of the state or its municipalities. It has looked complacently upon corruption, bribery, incom-

petence, favoritism and all the legitimate offsprings of an intense partisanship. It has long and persistently tolerated and even encouraged much that is inconsistent with and nauseating to common sense.

What we must aim at is a method or process with which to extract the real common sense of said citizen; and what we get from this, whether a double or triple extract, will all be needed in framing and enforcing good constitutions and laws.

Common sense demands that we should not risk intricate and complex, yet highly important technical systems uselessly and periodically upon the hypothesis that the "common sense of the American citizen" will restore it whole and sound.

The better policy would seem to be to hold to that which is good. And if evils press heavily upon us, and constitutional embargoes are in the way, the skill of our public agents in cutting out these latter and making way for relief is best employed (and so far as affirmation of such measures by the voting public is concerned, the same is true), when directed to such matters *alone*. We will gradually get a more perfect instrument by the attention of the people being directed to a *specific* issue at *one* time. Not necessarily to one issue, however, but to such issues only as are vital and need change and have been carefully canvassed and reported upon.

Evolution, and not extinction and re-creation, is the natural process for constitutional "development."

It has been frequently said of late years that Chicago has grown out of the 1870 constitutional garb prepared for her, like a boy grows out of a suit of clothes.

"This," said Judge Tuley at a committee meeting sev-

eral years ago, "is all nonsense. When a constitution is made, it is made for all time."

Said Hon. Geo. W. Wall, a member of the 1870 convention (as also of the one held in 1863), in a conversation with the writer, in reference to the same alleged axiom: "Talk about growing out of our state constitution, you might as well talk of growing out of the principles of government."

As to these latter statements, they certainly are sound in the abstract; or as applied to a constitution *made as one should be, a constitution proper*, containing only principles of government and fundamentally organic provisions.

But they are certainly inaccurate as respects the Illinois constitution of 1870 or the ordinary modern constitution, in which the principles of government while outlined properly are nearly hidden from sight by a mass of legislation, "mechanics" and method.

On the other hand, the illustration of the growing boy is not quite correct. If it be clothes that we are talking about, it may be said that the clothes never did fit the boy.

The boy was put in a straight jacket, which made his gait awkward from the start and dwarfed his growth; and his mother or natural guardian, the legislature, was prevented from altering his clothes to keep pace with his constant development.

That "a constitution once made is made for all time" can be used here, however, to advantage. If made to fit perfectly the conditions of a free people such instrument need not be made again. If not made perfectly, it can be perfected by amendment, but it ought not be destroyed *in toto* and rebuilt. This latter process is unnecessary and unnatural.

To say that after a republican state is formed and has existed a number of years, its organic system and fundamental law should be thrown aside for a new frame and declaration thereof, OR that periodically conventions of the people should assemble to even *consider* such a step, is to condemn democracy itself and to assume that it is an experimental system of government.

If there is much in the constitution which is illogical and cumbersome, it should be dropped or chopped off without bringing into confusion what is vital.

It is frequently said that constitutions *grow* and are not *made*.

This is true in a sense. The American constitution, however, as an instrument, is conceived as coming into existence at one instant of time. What is meant by the expression, as applied to such a case is, that the provisions which are inserted in such an instrument is the result of years of experience of organized society, and thus a "growth." Of course when a state is constructed and a constitution framed for it, the state is founded upon the instrument. As the state grows, conditions change and new provisions and radical changes in such instrument may be necessary; but this is so usually on account of inaptness and inaccuracy in language, which of course is one of many human limitations. In case of changes, however, the original instrument should remain the nucleus and be the basis of all that follows. It should be the tree which is pruned and grafted and gradually finished to stand well in the established order of things. To take such an instrument *in toto* and cut it loose from the moorings of public acceptance and from the shore of ages of experience, and launch it bodily into the sea of convention debate, hoping that it will drift safely back again to shore with its sound

timbers preserved, its loss only that of debris and unsound planks, and its general structure maintained, etc., is to commit one of the most foolhardy experiments that an organized people can be guilty of.

It will be said, however, that we have not thus far spoken accurately of the work or function of a constitutional convention; that all the forms of government are not thus "brought into hotchpotch or technical chaos," etc.; that the product of such a body is not final, but has to be submitted to the people for adoption; that if not adopted, the old constitution remains in force; and if adopted, the new instrument is apt to be the better one; and if so, the state is thus bettered by the operation.

But even though the state *is apt* to be bettered by such a radical operation, *the risk* is there all the same. And it cannot be told until after much experience whether it *has* bettered itself by the change.

And the *expense* is there. We do not refer only to the money spent in paying the members of the convention their per diem and mileage, etc., and the outlays usually incidental to such a body. Figured on the latter basis alone, a convention is an expensive luxury. But we refer to the larger items of the time of the people spent in response to alarms from the seat of convention, in sending delegations to such body, in studying the new instrument before election and all other expense necessarily attendant upon the agitation of the public upon so many questions at one time.

And the *doubt, inconvenience and confusion* are there. These make, indeed, a heavy item. That involved in getting the new constitution adopted, in getting passed the new legislation to carry out its more or less novel mandates with the contest of many different interests or

communities for first attention, in the long train of court decisions to follow upon the construction of the new provisions, before property and personal rights have escaped from the various perplexities into which they shall have been thrown, and that involved in furthering public improvements before the Supreme Court shall have "tested" various provisions, etc., etc., and all this is indeed a heavy tribute to "change (largely) for the sake of change."

Then there is the *delay*. Many who are now advocating the calling of a convention do not know the various steps to be taken or the time necessary to witness the decrees of such a body in force. First, the next assembly (January, 1903), would submit the question of calling a convention to the people at the next "general" state election, November, 1904. Then the next assembly after that (Jan., 1905) would call the convention to meet at a time fixed beyond the next "general" election (November, 1906), at which election delegates would be elected. Such meeting time would hardly be fixed before January, 1906, in order to give delegates an opportunity to prepare for it. The convention would be in session probably five or six months, which would take it to the summer of 1907. The convention would fix a day for a special election of the people of the state to vote upon the new instrument, "not less than two months nor more than six months from its adjournment." This would bring us to the legislature of January, 1909 (or a special session in 1908), for legislation, *if all went well*.

But there is another deterrent from this costly and uncertain experiment, which we dread much more than any or all others, viz.: the withdrawal of so many able men (for we would hope the convention members would be such, otherwise the plan would be condemned in any

event) and of a large body of other public spirited men from ordinary vocations of life, but more especially from the field of conflict and effort into which the many pressing social ills of our community so urgently call them.

Many questions are pressing hard upon us far more important than changing city charters or lifting obstructing "mechanics" out of our constitution. To withdraw the attention of the entire state public from these for the next six or seven years and have it largely monopolized by mere questions of law and theory of administration, etc., is a distressing outlook to any candid observer. We may wake up then and find that in the meantime we have lost much, very much, which it will take us years to regain.

One need not specify at this point. But there is enough to make the thinking citizen think gravely in these days of massive inconsistencies, when riots do no longer shock or alarm us; when gigantic monopolies are uncurbed and their regulation is literally *studied* into an assumed perplexity; when gross and widespread evils are looked at by an enlightened people as "problems" instead of simply issues; when communities and states and the whole nation are waiting to be *driven* to reform (and after accomplishing some temporary relief, possibly spend years in celebrating their achievement as "glorious"); when the giant lawyers of the country—now so much needed to help cancel complexity and subserve public economy—have nearly all been withdrawn into the channels of commercialism; when bribery—which America has not yet learned to call treason—stalks rampant in many places; when the highways which lead to the altar of a citizen sacrifice are blocked by long trains of patriots, each carrying tenderly

his cure-all specific and looking around pathetically for the overloaded shrine of the dead god of Theory; when whole communities are immersed in ignorance, vice and squalor, "cheek by jowl" with others in the slums of idleness and selfishness; when the great body of patriots throughout the land have not yet discovered that its countless minions in suffering and unhappiness are the same for whom old warriors fought and shed blood and suffered long and gave up life; when whole states even are paralyzed in their crises and hesitate to take the most natural next step on account of the hoodo cry of "paternalism," "socialism," etc.; when a trio or quartet of men have power over five thousand, and are able to terrorize whole communities, and to bring to the pinched faces of the multi-thousands of infants of the poor the added bitterness of winter's cold; when a supine public bows low to the sway of a rank partisanship and neglects to oust loafers and incompetents from positions of power and sacred responsibility; when the frivolous yawp of "party" is heard at the bedside of a state in sore travail and in a silence which is sacred; when opportunities to encourage the thousands to earn a living are not taken for fear of depriving the dozens of the incentive to pile up what they cannot use; when millions are preaching sacrifice as the law of individual life, while blindly and doggedly assuming that the collective life of the people can exist without it; when the throng are scrambling for positions of vantage and power over each other in the name of hope and justice and peace; when men called to jury service are drowning conscience in subterfuge, and escaping duty to preach about "civic pride" and inveigh against the "mismanagement of our public affairs"—and a wronged public neglects to take them to account; when patriots immersed in wealth are so pa-

tiently waiting *for laws* to allow them to help their insolvent city, and to return it a tithe of its own or to pay debts equitably its due; when the whole country is straining to find schemes for relief without cost and with no disturbance of preconceived and inaccurate notions of "vested rights," etc., etc.; when a fearless has been succeeded by a conservative press, giving out its wholesome but carefully chosen editorials while emptying out its volume of sensationalism and triviality in which a cheap public spirit willingly sops itself; when it refuses to give out all the truth it sees and to confess error when its error has been recognized and thus to get back to its position of influence and power with the masses which was once its own;—

When reforms are so delicately pressed, and those urging them tread softly for fear of displeasing the politician, the so-called "leading citizen," the "labor vote," their own sect or patrons; when even such are bowing apologies right and left to those who thrust their feet in the way of public progress and forgetting that these, be they many or few, pompous or base, can be easily placed in default, and if persistent, shown up to be public enemies; forgetting that the people are greater than any man or set of men, or school or sect; when even such try to bend or twist the path of progress so as to pass around defiant enemies of the republic;—and when they calmly tender the state what is left after yielding up the tribute demanded by partisanship, greed, commercialism, prejudice, vanity and cowardice;—

In *these* days one of the things which Illinois *least* needs is a constitutional convention.

For the storm clouds approaching fast from the offing or weighing heavily above us are those of error and not

oppression; we are under the tyranny of habit and not of law.

The multitude are crowding each other hunting for the pearls of life in the shells of avarice; a family united in interest are acting in division; comrades in struggle are unconsciously pushing each other from the way; loving hands unconsciously clasp the shuttles wound with heart strings, and ruthlessly throw the levers of the mill which grinds "so cruelly and so fine."

There are confusion of voices, compromising of principles, splendid equipments lying idle, talents unused, sympathetic eyes glaring blankly at misery, a trading in broken vessels; there are gardenless homes, dwarfed childhoods, "city wildernesses," lost neighborships, an aimless patriotism, spasmodic fidelity, orations in platitudes, jingo restlessness, deadening conservatism, a surfeit in letters, a blinded intelligence, weapons of hell offered in the name of "humanity," material wealth and soul poverty, wisdom frowning mystery, strong men in despair, giants decked out in the clown togs of fashion, a resting upon the past, bombastic celebrations, hollow applause, calloused hearts, metallized lives, colossal self-deceit, a palsied church, limited visions, preaching without practice, faith without works,—And a whole lot of dead men moving around.

It is said that usually the delegates to conventions of this character are men of brains and experience and upright in character. This is true. But it is also true that the personnel of such conventions of the last decade has not been nearly so high as that of the earlier days. Commercialism has drawn away from such forums the ablest lawyers of experience which the communities afforded and who were the dominating power in the conventions

"of old"; and partisanship has not failed to use its voice and authority in barring some out and letting others in.

But even assuming that the personnel of such a body to be called in Illinois should be of the best, it would be too large to give the best results.

We would not view with intense alarm a commission of five or seven of the very ablest lawyers and publicists of the state, given full power to make constitutional alterations. Such men would be the least prone to make unnecessary changes. But we would view with deep concern the willingness of the state to *intrust* them with this power where unnecessary, *or* the state of municipal life which necessitated summoning them to so act.

However, our concern in such case would be increased if the number of members thus attempting to serve the public were multiplied from the few to a hundred or more. The result would be plenty of debate, but less deliberate study, much more dissension, more unweildiness in the movements of the body, a less complete and comprehensive and more poorly knit instrument in the end.

Now, the people of the state have ultimately to pass upon all constitutional changes. And hence the question is one not solely of getting the best document formed, but of getting the best which the people can be nduced to accept, in order that the state-wide agitation and the expense, etc., may not be wasted or go for naught.

We would, therefore, not favor even any "commission" plan (whether made up by a special committee of the assembly or of outsiders specially appointed), other than one requiring such body to first recommend to the assembly the changes approved. For the assembly could thus be used as a gauge to test the public sentiment upon the questions treated and also the capacity of the public to

be educated up to the work of the commission if it were radical or drastic and yet meritorious. That part of the work which would pass the assembly by a two-thirds vote would thus be well assured of ultimate adoption by the people at large.

The natural result of such a permanent (the amendment) plan would be: That the most needed amendments would be assured; those of more questionable merit, or upon which the people would be apt to be divided and which would suffer a doubtful fate at the polls, would be eliminated, while the parts of the public body in a normal condition would not be disturbed.

While to adopt the other or "convention" policy is to commit the state to a succession of periodical and strenuous parturitions at each of which it has to choose between surrendering its old self for the new and untried prodigy, or having experienced its labors for nothing.

In the foregoing pages and in the legal argument appended hereto the present constitution of Illinois has been much criticised. But we do not mean that this shall be taken to reflect upon the caliber and ability of the men who in the convention of 1869-70 framed up that instrument. In fact we believe that one of the most forlorn hopes indulged to-day by many is that it is possible in the present state of partisanship, etc., to approach it in point of ability and high-mindedness in selecting by vote a new similar body. That convention met shortly after the war of the rebellion and before the public had learned to place power where power belonged; and to sacrifice much in demanding that it shall be rigidly exercised in the public's interest rather than to add to the public's burdens that of an awkward or hindering system; willing to be driven to cure *first* that which first ails or to

first replace that which first gets out of place. In fact we have not reached such a policy yet. But all the same we will be forced sooner or later to adopt it.

No doubt the instrument framed by those men would have been far simpler and broader if they had not had to face the question of ultimate assent by the people at large. The latter demanded with much emphasis that many things properly subjects of legislation be inserted in the constitution. Had the convention refused to yield to this demand their work might have been rejected and their time wasted.

Then again the prejudices, habits and schools of thought then prevalent more or less environed these able men as those now existing do the able men of to-day. Each generation can more easily see the faults of the preceding one. We should therefore steer clear of recklessly changing something evolved from the experience of the past, and on the other hand of assuming that because able men of a former generation framed an instrument it is so sacred that it shall never be changed.

We have elsewhere said that while the major part of our constitution is "legislation," yet it is good legislation. It is for this reason that we have not been incommoded more and earlier by the fetters in said document. Some of such legislation was, however, poor, as was inevitable, and much that was wholesome in 1870 has been rendered more or less noxious by changing conditions. This about accounts for the sum of constitutional evils from which we now suffer.

That there are not more of them is a good object lesson in proving that had we to-day a legislature of as able caliber as that represented by the convention of 1870 (which in reality we should have), the said body could

be half as great in numbers, its sessions half as frequent and half as long, and the public get four times or more the vital legislation which it gets to-day.

Another thing to be remembered is that it is idle for Illinois to change her constitution without bettering her legislature. The best constitution possible to draft or conceive of can not furnish good laws or prohibit bad ones any more than good laws can in and of themselves produce good citizenship.

The work that Chicago has thus far done in redeeming her city council from the hand of the briber and corruptionist is an invaluable preliminary to appropriate charter reforms. The work now being done to improve her representation in the assembly is likewise in line with real and permanent betterment.

As the field of legislation is so much wider than that covered by the constitution, we would expect that even a cursory study of the former would reveal many opportunities for the betterment of Chicago's municipal conditions which need not wait upon constitutional amendment or revision. Even the principal ones of the six or eight radical local reforms which we are all endeavoring to bring about need not wait for constitutional amendment, *but can be cured at Springfield by legislation in the coming winter months;* legislation which will not need to be repealed or even substantially changed by the adoption of proposed constitutional amendments. This may seem a bold statement to some; and the tempting challenge to substantiate it can not be accepted without prejudice to the frame of this report already long; and much we have written along this line will therefore have to be omitted. But it is true nevertheless. If this subject is thoroughly worked up and cov-

ered, the prospects of much relief the coming winter is not discouraging. Chicago's representation in the coming session will be better than that in the last. She has, too, as the assembly is at present constituted, some able members, and a listening court in the country members. Most of the latter are ruggedly honest; there are many men of ability and at least one giant.

That we need constitutional changes badly there can be no doubt. Therefore let this work go on. If we are truly sensitive of other and graver matters, we are more sensitive than ever of things "out of whack" in our frame of state and local government. Therefore let the work go on.

But while prosecuting it do not let us wrap ourselves up in the fond but vain hope that constitutions and laws can redeem a people from inherent vices or save them from decay, which past generations have so frequently done. We must not forget that Rome had a system of laws than which the brains of man has scarcely ever produced a wiser. Mechanical and legal limitations obstruct progress; that is why we want to remove them. But they have no life-giving virtues. And one can almost feel the spirit of resentment springing up in a sensitive state as she realizes how many will hide under the agitation for technical change to put off the day of ultimate reckoning, or who will offer to rise and shine in convention halls as their meed of service in a period of much communal distress. In all this movement and agitation we must not forget just what we can accomplish by law and what we can not. We will thus produce better law and get more accurate results. He is not master of the law who does not see its limits.

There is also a very erroneous but common notion

about the supposed drastic limitations in our constitution upon local or special legislation. It is not generally understood that these are not limitations upon the power of the assembly in such cases only where a general law can be made to answer. Wherever conditions obtain in one community of the state and not in others a law special in application to that community and affecting such conditions will be upheld.

This is a wise rule and should be strictly enforced by the legislature itself without any constitutional direction therefor. The only objection to having it in the constitution is the fact that placed there it gives or fosters a disposition or gives an inducement to those affected to test every such law in the courts before the classification made by the act in respect to conditions is accepted as sound.

So, too, the general public forgets that the police power of the state—the safety valve to constitutional troubles and legal "boiling pots"—is ample in most instances to relieve legislative and municipal ills where other remedies fail. The ramifications of its principles are wide and deep; so much so that the Supreme Court of the United States has declined to attempt to define it or to say as to what subjects and in what cases it shall apply.

Conclusion.

In conclusion we desire to say that there is no necessity for much wrangling over this question of convention or none. If the advantages and disadvantages of the two plans for a change have not been satisfactorily treated here, the delegates in the coming convention can assign the work to a committee of its members and have it more accurately performed.

In almost every address, editorial or treatise on this subject thus far issued it is conceded that the calling of a convention is a serious step which should only be taken *if necessary.*

Our efforts have been therefore directed towards showing that it is *not* necessary. The first question is, how wide in scope can single amendments or amendments to be voted on at one time be made? This is a purely legal question, and has been fully argued in the annexed pamphlet, and later will be presented the conclusions of the examining counsel when they come in, whether confirmatory or negative.

The next question is, if the single amendment plan be not feasible, how soon and by what steps can the present unreasonable prohibitions upon amendments be repealed?

And the next question after that is under what circumstances is calling a constitutional convention justified?

The first two questions are legal ones purely; and the last is substantially that. For to see how far and in what direction certain provisions reach into state or municipal life, and to tell what changes may be necessary to allow advocated reforms, etc., is the work of lawyers.

Yet our newspapers are still publishing the "senti-

ments" of all trades and classes upon this non-sentimental question. What are the "sentiments" of the people at large as to one of Dr. Senn's surgical operations? It will be answered that in this case the people are the surgeons who in voting upon submitted amendments, etc., ultimately operate upon themselves. True, but diagnosing their legal troubles and tracing symptoms to their source and framing up and recommending legal weapons for the occasion and explaining their use and "proving the case," so that the unskilled can act intelligently in voting upon remedies, is the work of skilled hands and not a matter of sentiment. Above all, it takes *work;* and the public should soon grow into the habit of demanding this as a condition precedent to its giving serious attention to proffers of remedies.

It is not a subject for prejudice or hobby-riding. And if the earnest people engaged in this work shall after calm deliberation conclude to renew the crucial experiment of a constitutional convention in Illinois, we should all join in and sacrifice much to make it a success, and, above all, to put into it the best brains, the most rugged fidelity and the most thorough experience that the state affords. And if in spite of our efforts, crises occur and great dangers threaten, we should then join in earnest appeals to "the common sense of the American citizen." Possibly we would be put to this and in some instances there might be little else to do.

No one who studies and reflects upon the question of constitutional conventions in America but will wonder why the people of so many states have resorted to them so frequently. These communities have acquired the "convention habit." No better service could be done by a legal author than to show up to a "going" state the un-

naturalness of calling such conventions, and to help break up this habit. But this must be the work of other hands than ours.

Judge Jameson, in his work on "Constitutional Conventions," defends them as necessary in case many and radical changes are needed. He states that in this way "the state has a right to reproduce itself as an animal does."

But this simile is not similar. In the case of the animal it can live with its offspring. But in the case of the state, if it begets such an offspring, the parent is transformed and merged into the latter and the old state is extinct. If the state has become so effete or diseased that it threatnes to die, then it should transform itself, and a convention is not inappropriate to that end.

In passing upon the merits of the two principal classes of constitutions, viz.: written and unwritten, that author recommends the unwritten constitution "for a community whose political training has been carried to a high degree of perfection." "But," says he, "for a community whose training has been imperfect, or which is subject to fits of political apathy, alternating with those of intense zeal for reform, the written constitution is doubtless the better one."

The simplest written constitution is nearest to the unwritten one; and a periodical and successive making over of constitutions, as is usual in conventions, is farther than ever away from a wise and stable policy in respect to organic form and foundational principles. It is hard therefore to see a reason for the author's tolerance toward such bodies. The careful, deliberate and specific amendment method is all that Illinois needs or is apt to need; and if we could in never so humble a manner do

something definite towards making her constitutional conventions a thing only of historical interest, we would deem it a kindly office which it were a privilege to perform.

It must not be forgotten that there has been but one Magna Charta and but one constitution of the United States. The latter has had fifteen amendments; but the first ten of them are simply declarations usual in the Bill of Rights, and it has been finally held that they do not add to or detract from state powers. The first twelve were passed very shortly after the union was formed; and hence but three amendments have been required in over one hundred years. Yet the functions or ramifications in actual working of the federal system have grown wonderfully in that time, and the people of the whole nation, as such, have been much more closely knit together in personal interest and relationship.

No reflecting lawyer in Illinois can doubt but that had we retained the original constitution of 1818 and made specific changes by amendments from time to time, as needed, we would now have a much better and far simpler constitution, and we would have been saved the state-wide agitation of 1848, 1863 and 1870, and the big grist of new decisions and the many complexities in the law which followed in the wake of the adoption of the constitution of 1848 and 1870.

What a difference in a state's tranquillity a natural or erroneous method of making constitutional changes may make is shown by the history of the two neighboring states of New Hampshire and Massachusetts, of apparently equal intelligence and enlightenment. The former has made its amendments through conventions, and for much of the period of her existence the question of call-

ing a constitutional convention has been required to be periodically submitted to the people for a vote. The result is that the product of her conventions in the way of amendments has been oftener rejected than accepted by the electors at the polls; and the people of the whole state have been teased and annoyed by the question of calling a convention being submitted to them over twenty times in less than seventy-five years.

On the other hand, Massachusetts has not been agitated by a convention since 1820; many amendments submitted to the legislature have been adopted and scarcely any rejected.

The policy of the American states ever since their organization to gradually fetter their legislatures more and more is well reflected in the constant growth in length of their constitutions. The present constitutions of most of the older states are usually about three times as long as the originals. That of Virginia is six times as long; that of Illinois is two and one-half as long. The original constitution of New Hampshire conatined 600 words; those of Mississippi, established in 1875, and of South Dakota, adopted in 1889, contain each over 26,000, and are each about *forty times* as long.

Mr. Thorpe, in an article upon Recent Constitutions, says that the length of the constitutions of the new states lately admitted to the Union, "proves that the people have lost faith in their legislatures." And Mr. Bryce says "they witness to a distrust by the people of their own agents and officers." And the latter, after remarking that the less the legislatures are trusted the worse they will be and that therefore the first step to reform is to improve them, concludes: "But the improvement of the legislature is just what the Americans despair of, or, as they would prefer to say, have not time to attend to."

They will soon, however, have to *take* time. For when the public life is gradually becoming more and more interwoven with private life, and the administration of its affairs are telling so directly upon the daily interest and economy and life of its citizens, this duty is becoming one of self-protection.

Had this duty been recognized earlier in Illinois, and had the constitution-makers of the earlier day driven the people to meet it by refusing to attempt to make constitutions a cover of retreat for the public in shirking this duty, it is possible that we would have long ago reached the turning point in this vital matter of public policy; and that we would now be much further along in the road towards the goal of uniform excellency in private citizenship, which will cancel evil in public life as the light dispels the darkness.

However this may be, the first duty of Illinois is to improve her legislature; for big questions are coming fast which will need men of training, of rugged honesty, of courage and of brains.

In the annexed opinion it is said: "It (the convention) is, however, well and naturally adapted to the construction or creation of a state; and in fact until the state shall have become so diseased as to need practical re-creation, we can see no other use for it."

If Illinois were in such a diseased condition, it would be our duty to confess it. But there are very few, if any, within the borders of the state who can at present see any such crisis as this.

Illinois may well envy Massachusetts in her record in having for nearly a century adhered to a constitution composed in chief of organic provisions and governmental principles, and the total absence from her history of any

but the one revision convention. Her policy in this regard is directly traceable to the great Webster, whose marvelously clear insight, broad vision, and splendid equipose of judgment and the dedication of whose magnificent talents to America's sovereign weal seem to gather more telling evidence and to settle into more grateful remembrance as her commonwealths grow old.

Respectfully submitted.

HARRY S. MECARTNEY,
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APPENDIX.

The SCOPE of AMENDMENTS to the ILLINOIS CONSTITUTION.

I.

Would an amendment to the Illinois Constitution drafted in the form as annexed hereto, be invalid?

Section 2 of Article XIV of the Illinois Constitution is as follows:

"SECTION 2. Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two Houses, such proposed amendments, together with the yeas and nays of each House thereon, shall be entered in full on their respective journals; and said amendments shall be submitted to the electors of this state for adoption or rejection at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at such election shall vote for the proposed amendments, they shall become a part of this constitution. *But the General Assembly shall have no power to propose amendments to more than one article of this constitution at the same session, nor to the same article oftener than once in four years.*

We quote from the report on this matter made by the writer and Enoch J. Price, Esq., to the Federation two years ago.

"The provision that amendments to but *one article* may be proposed at the same session of the General Assembly has frequently confused the public mind. The constitution is divided into fourteen articles. An indefinite number of amendments might be submitted at the same term, provided only that they all *purport* to amend the *same* article.

"The amendments which may be submitted are not limited to amending the *subject-matter* of the article which they purport to amend, but may *in fact* amend several of the articles of the constitution at one and the same time. This is an exceedingly important principle to be kept in mind. The Supreme Court has expressly so held in the case of *Wilson* v. *Board of Trustees,* 133 Ill., 443, which involved the constitutionality of the act under which the Sanitary District of Chicago was organized. The question arose as to the effect of the amendment of Section 31 of Article IV of the constitution adopted in 1878, upon Section 9 of Article IX, relating to the power to make special assessments for local improvements. The court held that the amendment operated to amend Section 9, Article IX, precisely as if it had inserted into the body of that article the name of drainage district as one of the corporations which might be given the power to levy special assessments.

"Our conclusion is that a single amendment may be made broad enough in its terms to give the most comprehensive power to accomplish all the reforms in local government needed or desired by the people of Cook County, and, consequently, if such an amendment can be secured a constitutional convention is not needed for that purpose."

It is this conclusion which Speaker Sherman announces that he "disagrees with," which a member of the

Chicago bar in a banquet opinion calls "subterfuge" and "an ingenious scheme," and which a committee of the State Bar Association after some argument thinks to be a mere attempt at "smuggling provisions into the constitution," to constitute a "palpable trick," and "believes would be held invalid by the Supreme Court."

Under our present constitution each bill passed by the Legislature must have expressed in its title the general subject affected by it.

Each bill must also embrace but one subject.

Many acts passed since 1870 have been held invalid on account of these provisions. And lawyers habitually testing laws by them naturally look for a similar limitation or naturally incline to give a similar construction to supposed kindred clauses in the constitution. It is believed that this practice is largely responsible for the opinions of these gentlemen, by which they give to the amendment provision a meaning which requires language not in the provision itself.

It is said by our worthy contemporaries that the true intent and meaning of this provision is:

1. That only one article can be amended at a time.

2. That such amendment must directly relate or be germane to the "subject" of the article.

3. That it must not amend or repeal the provisions of any *other* article.

It is quite clear that only the first of these three requirements is expressed in the amendment provision itself.

The other two have to be supplied, if at all, by mere inference.

1. As to the first requirement, so long as we are dealing with "articles" we will adhere to it. We will say that all the amendments, no matter how many, which are proposed at one session must be placed under and purport to amend but one "article." (Later, however, we will show that this limitation does not refer to the portions of the constitution other than "articles," which are of course amendable; and that this being so, the bars are down at all events for any amendments deemed advisable by legislature and people.)

2. So far as the second requirement is concerned, it is clear that the term "subject" is not a definite attribute or accompaniment of the word or item or division "article" of the constitution.

There are headings to various articles, such as "revenue," "corporations," etc.

But these are nowhere declared to be indicative of any distinct *subject* of the article which should be considered as forever peculiar to the article itself.

They are no more than mere appellations for convenience, fairly indicative of the general subject or subjects covered by the provisions placed under each heading.

There are likewise in some articles a number of such headings set in various places throughout them, and of equal prominence in the matter of size of type; and these are nowhere declared to be mere subheads or divisions of a leading or general or "head" appellation or "subject."

As said before, a statute to be valid must, according to our constitution, have but one subject, and that subject must be embraced in its title. The provisions of the act must be fairly *germane* to the subject or object expressed

in the title of the act. If some of the sections are thus germane and others are not, *i. e.,* relate to *other* subjects, the latter sections will fail, and the former will stand; but if they are not separable so as to leave the main object of the act unimpaired by excluding the one class and retaining the other, both are invalid and the whole statute fails.

The test of the validity of any section of the act in this respect is: Is it fairly germane to said expressed subject?

But this test is applied to each statute *solely* by virtue of the constitutional requirement therefor.

Before such provisions were adopted and adhered to the whole field of method of procedure was open to the legislature. Congress to-day has no such limitations. It legislated in respect to the Cuban constitution by provisions in the bill for "appropriations for the army and navy."

The practice of the "sharp" members of the Assembly and the floaters of private schemes for gain, hiding vital provisions away in some obscure corner of a bill ostensibly passed for another purpose, was no doubt the occasion for the adoption of these limitations. It was the result of treating public servants as public enemies and of attempts to fetter them—which was the cardinal feature of the work of the constitution makers of 1870.

It is probable that general loose methods in framing bills and arranging their subject-matter, from which much inconvenience in referring to statutes accrued to the bar and courts, was also partly responsible for said limitations. The whole matter, however, is logically one of convenience or method only and has scarcely a proper place in a constitution. It could be covered by a rule of the Assembly that no bill would be considered unless

it were framed within these lines. And if perchance after an act had been passed some section was found to be naturally out of place, it could be noted and referred to by the publisher of the statutes at the point where it logically fitted.

An occasional inconvenience in this respect would be an infinitely less evil than the frequency with which laws of the most vital importance are declared void after years of agitation and expenditure of public energy for their passage. Relief is thus denied, solely on account of the mere *wording* of a title or the *arrangement* of subject-matter.

We repeat, there is no expressed requirement in the constitution that amendments to one article must relate to the *subject* of that article; and secondly, there is no declaration as to what *is* the subject of an article.

Nor is there any uniform *plan* of the constitution by which a *distinct* subject is placed under a distinct article to be seized on for the application of this doctrine of inference. There are in many articles a number of subjects.

What, for instance, is the distinct subject of Article II, headed "Bill of Rights"? Its first section declares that "all men are by nature free and independent," and that "among their inalienable rights are life, liberty and the pursuit of happiness." In the 7th the privilege of the writ of *habeas corpus* is preserved. The 15th directs that "the military shall be in strict subordination to the civil power," while the 20th and last declares that "a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty."

The provision as to *habeas corpus* could as well be placed under the article upon the judicial department.

The provision in the 16th section that no soldier shall be quartered in any house without consent of the owner, etc., could appropriately be placed under the article headed "militia."

So, too, the provisions in Article V in respect to the veto of the governor could as well be placed under Article IV relating to the General Assembly, and the passage of laws; as also might the sections in said Article V providing for the adjournment of that body by the governor in case of a disagreement between its two constituent houses.

Therefore the supposed inhibition against amending an article by inserting therein anything not germane to its subject fails upon analysis. For, first, there is no such inhibition expressed (which is sufficient in and of itself); second, there is no declaration of one distinct technical "subject" to each article; and third, there is no uniform arrangement of "subject" to "article" *throughout* the entire constitution from which such prohibition might be even vaguely inferred.

As to this supposed requirement in question which we have numbered 2 above, it must not be forgotten that the draft of the Civic Federation amendment does not violate it even if it does exist.

If it be said that the general "subject" of Article X is "Counties"—the appellation or heading thereof—certainly the said amendment relates to such subject, and the various specific clauses therein are fairly conducive to an effective scheme of consolidation.

But we have no doubt but that the alleged requirement as to "one subject" and "germaneness," etc., is entirely imaginative and untenable.

3. As to the 3rd supposed prohibition, viz.: that any amendment to an article should not directly or indirectly amend or repeal the provisions of any *other* article:

It is here that our friends seeking to give a stringent effect to the limitation in question become boldest, and it is that that is the specific proposition of the State Bar Committee.

There is no expressed inhibition in the said amendment section against an amendment to one article amending the provisions of any other article. Here, too, our friends can only supply their proposed limitations by inference.

It must be remembered that even in making *statute* law there is no such limitation. An amendment to the "revenue" statute can validly repeal, either expressly or impliedly, a section of statute on "counties" or "cities" or "fees and salaries." The requirement as to one "subject," etc., has no application to repeal by implication.

Geisen v. *Heiderich,* 104 Ill., 537.

And what can be repealed *impliedly* or by language unexpressed can be repealed expressly.

These rules are so well settled and the instances in which they have been applied so common that it is necessary only to state them.

So if our friends' 3d and inferred limitation were adhered to it would cause constitutional amendments to be decidedly more narrow in scope than statutes.

If it were tenable in statute law it would be pretty hard to see just where the limits upon legislative action lay; and the choice of remedies in most instances would be decimated or so reduced, that, taken in connection with the other requirements above mentioned as to germane-

ness and taken also in connection with other prohibitions, viz.: that laws should not be local or special, etc., etc.—the Legislature would be apt to gradually work to a "dead stop."

So as to the constitution. Our friends would restrict us to curing one at a time the many sores upon the public body corporate and in each instance make us hunt for and adopt only some specific which could affect no other part of the body and which could be proven to be of peculiar and independent origin. What this might lead to is not hard to conceive.

The speaker of the last Assembly, Hon. Lawrence Y. Sherman, in his address to the House Committee of the Whole upon the resolution for a constitutional convention earnestly urged as his chief reason that the amendment plan was too slow, apparently supposing that the limitations thereon were as strict and severe as the three requirements above treated.

He said: "If I could vote every two years on one of the amendments wanted by the Civic Federation alone, I would be 100 years old before I had voted on the last of them." He then mentions a number of other Chicago bodies "who want amendments of great pith and moment, and we can think up a few amendments here in the legislature."

The able and conscientious advocate had probably never used his legal acumen to think that if such were the case it was an overwhelming argument against the proposition that such a prohibition being valid.

If it took 50 or 50 years to cure but *a portion* of the ills which had grown upon the body politic in 30 years, what was to be done with the remainder? And what was then to be done with the volume of *new* ones which

had sprung up in the meantime, viz.: during the second half or latter part of 50 or 60 years? Such evils do not grow singly on account of gradually increasing contamination, and these new ones might be thrice as great as the others.

How long would the race continue? How long would it take for municipal disease to overcome the state and work her dissolution?

To calmly contemplate such a thing is suicidal.

And to attempt to invite the state to a convention as the other alternative is little more kind or considerate.

To say that the people through their delegates fettered themselves from developing their constitution along with their growth, from which handicap public evils would necessarily grow and intensify and get a great start of remedial processes and gradually grow worse and worse, and that the state thus diseased must be deprived of a *natural* and *orderly* remedy unless it exposed itself to all sorts of *new* diseases (occurring from vicious and possibly dominating elements in convention), is to convict the state's representatives in convention of the same suicidal intentions.

What is there, therefore, of benignity and usefulness in such limitations which should impel a court to multiply in effect the said provision and add to the restriction upon amending "one article" at a time, the two ***new*** ones, 1st, that such amendments must be "germane" to a supposed subject, and 2nd, must not in effect amend any *other* article or repeal any section thereof.

The fact is, that in this case, as in the limitations upon statutes above mentioned, the whole matter is one of convenience.

The term "subject" is a relative term as here used.

Laws may be different in their subject-matter in a sense. A law regulating the taking of property for public use has little resemblance in its subject-matter to one entitled "Fees of city officers." Yet in large cities it might be found highly desirable that certain city officers should constitute a body to value land taken for public use (as is the case in some states), and that the regulations and laws in regard to the fees of such officers be radically changed to meet the imposing of these new duties.

Such a law which in providing for said body and prescribing methods of procedure under "Eminent Domain" would thus in effect repeal or amend certain provisions of the "Fees and Salaries act," would be held constitutional in spite of the *expressed* limitations above referred to. But if a similar proceeding or provision therefor were attempted under the constitution with no such expressed limitation, our careful friends say it would be invalid.

A more studied and deliberate dissent from the said opinion given the Federation as to the scope of the one amendment, etc., is contained in a report to the Illinois State Bar Association made the present year (1902) by the special committee upon the "Expediency of Calling a Constitutional Convention," signed by Sigmund Zeisler, Esq., and four other members of that body, viz.: Messrs. William E. Church, Lester H. Strawn, Logan Hay and James M. Sheean. That the report should be given its full weight, pains were taken to state at the outset that "the report does not, as is sometimes the case, express merely the opinion of the chairman of the committee, but reflects the deliberate judgment of the members signing the same."

The above conclusion in said opinion is set out in full and is then treated of as follows:

"Your committee believes that under the authority of *Wilson* v. *Board of Trustees,* cited by Mr. Mecartney, an amendment of one article of the constitution may *incidentally* have the effect of amending a provision contained in another article. But we do not believe that that case is an authority for the proposition that under the guise of an amendment *purporting* to amend only one article, provisions may be smuggled into the Constitution which *directly* change one or more other articles of the Constitution. Otherwise it would be a very easy matter to write an entirely new Constitution in the shape of an amendment *purporting* to amend only one article. Article X of the Constitution deals with the organization of counties and with county governmental agencies. As regards the administration of justice, this is treated by the Constitution as a separate matter in Article VI, entitled Judicial Department. This latter article contains special provisions respecting the courts of record of Cook County and justices of the peace in Chicago. The framers of the Constitution thereby clearly indicated a sharp division between the administration of law even in the specially singled out County of Cook and the legislative and executive functions of government even in the again specially singled out County of Cook. A provision for the consolidation of legislative and executive governmental functions within the County of Cook or some part thereof is a proper amendment of Article X. *Incidentally* it amends Section 22 of Article IV forbidding special legislation as to county, town and city affairs. To this extent it must be upheld. But to add thereto a provision respecting the abolition of justices of the peace and constables, though applicable only to Chicago or

Cook County, is a palpable trick to evade the prohibition against amending more than one article at the same time, because such a provision does not incidentally, but directly amend Article VI.

"In like manner, the framers of the Constitution sharply distinguished the matter of revenue, an incident of which is the incurring of debt, from all other governmental affairs, and treated it in a separate article, viz.: Article IX. Not a word bearing on this subject can be found in Article X. Any provision, therefore, which increases the limit of Chicago's debt incurring power is a *direct* amendment of Article IX, notwithstanding the fact that *in form* it be an amendment to Article X by being made a rider on an amendment which is germane to Article X.

"For these reasons we regard as unwise the agitation for the amendment proposed by Mr. Mecartney and endorsed by the Civic Federation of Chicago; if adopted, we believe it would be held invalid by the Supreme Court. Moreover, this amendment ignores the balance of the state which is deeply interested at least in the matter of obtaining a thorough recasting of the judicial system. It ignores the necessity for fundamental changes in our revenue system. It takes no account of *affirmative governmental* principles which ought to be engrafted upon the Constitution."

It would seem quite clear that these suggestions do not meet those above outlined.

The learned gentlemen put clauses into the amendment provision which clearly are not there, viz.: language to the effect that an amendment of an article must relate to the subject-matter of that article (supposedly the mere heading thereof) and must not affect or repeal the provisions of *other* articles.

So far as the possibility of "writing an entire new constitution under the guise of one article," etc., is concerned, it may be observed that the delegates no doubt supposed that in making amendments some regard to articles and arrangement thereof would be observed. By dividing the constitution into "articles" in which one or more general subjects were treated, and requiring that each amendment or set of amendments passed at each session should be placed under one article, and hence that one article at a time be *changed,* the convention thus placed an embargo upon making inconsiderate amendments. For allowing that there *could be* adopted at one time a number of amendments variant in character and wide in scope, yet if this practice were recklessly indulged it would cause the constitution ultimately to gradually become a substantially different document in form or to display considerable patchwork. This was something which would naturally be avoided, and hence changes in the principal arrangement of the constitution, *except where necessary or vital,* were thus discouraged or discountenanced.

Thus, therefore, a *definite object* or function *is* subserved by the amendment provision if we give it simply all its expressed meaning, and abstain from "inference."

Secondly, if such provision did not operate to prevent the people from "writing an entire new constitution under the guise of one article" it is not perceived that great damage would be done. The other articles or sections thus laid aside and repealed would of course be omitted from the published constitutions thereafter with no greater inconvenience than what has been experienced in the past by the action of legislatures and with no more novelty than that exhibited in a fashion in vogue for centu-

ries. Many and varied existing statutes upon "crimes," "misdemeanors," "forfeitures," etc., have been embraced in one statute as a "criminal code." In various states complete revisions of statutes have been made reducing them in volume as well as the number of chapters, and causing a gradual change in the arrangement of the statutes as published.

Thirdly, the people responsible for the alleged inconvenience, if any arose from writing an entire new constitution as one article, would be the people affected thereby.

Fourthly, if by giving the provision all its expressed meaning and no other it failed of *any* definite purpose, or of prohibiting to any extent any certain action, there is on this account no warrant to indulge in inferences.

Instances are common where statutes have been held to be mere declarations of what the law had been in fact before they were passed, or what it would be without them, or where from some defects in their drafts or from the provisions of other statutes, their effect has been void or valueless.

No doubt occasionally for kindred reasons planks in constitutions have been found to be equally valueless.

There is, therefore, no novelty in experience to be avoided in this case which in and of itself would warrant such a resort to "inference."

Fifthly, the object thus sought to be subserved, viz.: avoiding a provision in the constitution which fails of effect is an infinitely less object than the one which would be destroyed by its fulfillment, that is to say, avoiding the alternative of either preventing the orderly development of the state, or putting it to the unnatural and extravagant crucial expedient of having its whole organism and polity hacked over in convention.

In the *Wilson* case, *supra,* the amendment construed was Section 31 of Article IV.

The new matter in said section which was adopted in 1878 was to the effect that "the General Assembly may provide for the organization of drainage districts and vest the corporate authorities thereof with power to construct levees, drains and ditches and keep in repair all drains, ditches and levees heretofore constructed under the laws of this state by special assessments upon property specially benefited thereby."

Section 9 of Article IX had provided that the General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment," etc. The Supreme Court had ruled that this provision taken in connection with other language in the section was a limitation upon the power of the Assembly and prohibited it from vesting any *other* authorities with the power to levy special assessment, *e. g.,* "drainage district" authorities.

Therefore said amendment placed under Article IV *directly* amended Section 9 of Article IX, by removing the ban on drainage district special assessments.

Yet it was held valid. Justice Scholfield, who wrote the opinion, did not distinguish between "direct" and "incidental" amendment, however.

He held that of course the Legislature had always had the power to create drainage districts or any other kind of municipality it chose to, and that hence the provision of allowing the *creation* of drainage districts was merely a dry declaration of what it could have done in any event. The provision for the grant of the power of special assessment to drainage boards was the main and

principal portion of the amendment. There was certainly nothing "incidental" about it.

This italicized distinction between main and "incidental" amendment should therefore have been tested more before being launched upon the public.

And there seems to be less of "smuggling" and "palpable trickery" in simply giving the English in the section in question its plain import, than in entangling the people with a very net of prohibitions, which might strangle their municipal life.

What the five gentlemen are each here driving at in their said individual opinion is no more or less than an attempt to distinguish between express and implied repeal.

"Amend" is "to make a change or changes *in the form of*, as a bill or motion, or *a constitution*." (Century Dictionary.)

Thus if we amend an act we change the form of it, the *language* of it. In doing this we can *expressly* repeal the provisions of another act or a part of them. Or if our language is inconsistent with any such provisions the former will be to the extent of such conflict repealed. This latter is a case of repeal by implication.

But in changing the *form* of one act, we can not thereby change the form of another act any more than by the act of rolling one marble we can be said to be rolling two.

The word "amend" is used sometimes in the sense of repeal or a change in substance. And so used it would be proper to say there were two kinds, "express" and "implied."

Probably our friends meant this; but even allowing them these two (as it is thought) more accurate terms, their conclusions stand out opposed to precedent and practice and barren of logical warrant.

It is not necessary, however, as said above, to nullify the amendatory provision in question by the conclusion we have announced.

It can be given effect by a simple observance of the requirement that all amendments submitted at one session be placed under *one article, i. e., amend* or *change in form* but one article.

That this direction would be observed, and that at the same time the *arrangement* of the instrument in respect to subject-matter would not be *unnecessarily* disturbed and involved beyond reasonable bounds, the said convention had to and no doubt did trust the people to see to.

It may well be that the convention supposed it had made such a simple (?) instrument that it would be learned "by heart" by every judge, lawyer, citizen and high school graduate; and that amendments thereto could easily be kept track of and the instrument thus easily preserved in the public memory if this rule of *changing* one article at a time were observed.

At all events their attempt at a limitation in respect to amendments resulted in a mere matter of form or convenience.

When it is recollected that the constitution consists of nearly *two hundred* sections, and some of these are of complex subject-matter, it was quite natural that some attempt at keeping it from becoming in future much more complex in form was thought of.

The mainspring of doubt in the minds of our brethren in this matter is not hard to trace.

It is assumed that *some* limitation was in fact intended by the framers of our constitution.

Said doubt has its origin in a reluctance to do what might seem like an attempt to help out a situation by ignoring legal requirements. The idea is, that while the delegates in convention may possibly have *said* something which meant *nothing*, yet they certainly *meant to say* something which *meant something*, and hence their wishes should be respected and venerated.

The refreshing innocence in this willingness to bow to the inevitable and rather than even lightly disappoint a few ancestral citizens, to pass under the rod of progress-prohibited-except-at-the-snail's-pace, is not to be despised. The community needs more of it. In fact, it is suffering from a dearth of it.

But as lawyers we cannot escape the responsibility of finding out what legal clauses mean, and this through the consideration of both words and subject-matter.

When we consider clauses in the constitution we must not forget the nature of a constitution or the danger of greatly curtailing power to change it.

The fact that a certain construction may lead us to ruin or danger of ruin, is a great factor in helping us to select a construction where words are vague, or, as in this case, in keeping us from extending language beyond its expressed import, or from "construing into" the constitution words which are not there.

And between recognizing that our friends of a former generation may have made one mistake and attributing to them an intent to work us dire evil, we choose the former with alacrity.

That Illinois should flounder forever in impotent attempts to extricate herself from a tightening net of inhibitions against progress, or to be released therefrom only upon condition that she bring all her cardinal forms and principles of government into actual or technical chaos and prove to herself her ability to re-extract the good ones while taking grave chances in reaching out for something new, presents an alternative which cannot be lightly treated, or from which we cannot run away. If we approach this threatening monster courageously we will find it to be only a retreating apparition.

To always allow vaguely worded clauses to have a definite meaning is to assert that language is unnecessary to express laws and regulations, or that a reviewing body can always *guess* at unexpressed meaning. (Vague or meaningless terms would thus be placed upon a par with or *above* clearly expressed ones.)

If we had the power to do this we could dispense with courts and lawyers; but to assume it would be to attempt to jump beyond human limitations or environment.

If, therefore, an attempt had been made by the use of *language* to add the requirements numbered 2 and 3 above or limitations, and the same had not been *clearly* expressed, the contention is that it would be nugatory under a *strict* construction to which it would necessarily be subject.

But in this instance our friends have gone entirely beyond the medium of language to whisper what was in the minds of the individual lawmakers of a third of a century ago!

If, therefore, the constitution contained the same limitation upon amendments to the instrument itself as the ones which it fastens upon the legislative in the passage of bills it would be very narrow in application. We have

little hesitancy in saying that if it were found to obstruct the orderly development of the state and severely dwarf its growth, or to draw heavily upon the public wealth, health, prosperity or general good, it would be held void and ineffective, or that it was not applicable to such extraordinary case; and that a measure which it was seen would relieve the public ills would be lifted in the eyes of any competent court to the plane of a police law and be sustained, in spite of any letter conflict between it and such provisions.

Great crises justify heroic action. Grave subjects demand wide discretion in handling them. Solemn instruments demand broad views of their subject-matter. When the choice of instruments is denied the only surgeon who can cure a fatal malady, he must exercise a full discretion in using that one which is given him. In executing an order to enter all buildings one must except those which are found to be simply coverings to fathomless pits.

All this is not "evasion" or "subterfuge" or "palpable trickery" or "smuggling," etc. It simply proves that life has its responsibilities, which can not be escaped; and that either to "infer" embargoes upon progress or to blindly deny language any but the one meaning when applied to subject-matters as variant as the plants of the earth is possibly to mar the wisest plans for man's advancement or for his redemption from misery.

This is what Gibson, the ablest of Pennsylvania judges, meant when he said: "A constitution is not to receive a technical construction like a common law instrument or statute. * * * It is to be interpreted to carry out the great principles of government, not to defeat them."

The subject-matter of a constitution, as said before, is variant. Each clause must be considered with refer-

ence to its subject-matter and the department of government to which it relates. That is, the constitution is to be regarded as a *grant* to the courts, but a *limitation* upon the legislature. This particular section was expressly held to be a limitation in the *Wilson* case, and this has never been open to serious question.

In construing a particular clause of a constitution which is in doubt, the debates in convention are sometimes used by the courts to aid in ascertaining what was intended.

This practice, however, is to be cautiously followed and is very narrow in application.

In case a *term* used be vague or its exact significance is not known to the court, or it is one of particularly local meaning, it would seem natural and perhaps necessary to look to the debates to ascertain that it had an accepted meaning, and what that meaning was.

In a test, however, of the mere extent or application of a provision the terms of which are clear and of universal significance, and which could be given some effect *without* resort to such means, it would be unsafe to rely upon the expressions of the members who might have chosen to speak upon the subject. In construing a mere provision for a method of procedure such course would be particularly treacherous. Some members might have thought the limitations stringent and others might have thought them liberal or light. On this there might be a wide difference of opinion.

The speaking members are not necessarily the safer judges. And many a vote "aye" might have been prompted by the individual's opinion that after all the clause or section proposed would not have the effect its proponents supposed that it would.

Resort, therefore, to constitutional debates should be an exceedingly cautious practice, and is not applicable to a case of this kind.

We have, however, examined the debates of the convention of 1870 and find scarcely one reference to this amendment provision.

It seems to have been borrowed from the constitution of 1848, and it has never been construed by the Supreme Court, no test case having arisen.

Nor is this a case where other "extrinsic aids" can be resorted to. There are no vague terms, etc., to be interpreted. The provision means just what it says and no more.

Extrinsic aids, such as the object to be attained, the mischief to be remedied, cotemporaneous history, the circumstances attending the formation of the constitution, the convention debates, etc., "can be resorted to *only* where doubt exists which it is *impossible* to solve from an inspection of the *instrument itself,*" or where the "text is obscure or ambiguous." But "they are powerless to vary the terms of the constitution."

Am. & Eng. Ency. Law, 2d Ed., Vol. 6. pp. 929. 930, and cases cited.

II.

Even if the rule of "germaneness" obtained, the draft of amendment annexed comes well within it, and would be valid.

The question occurs here: Apart from all questions of statutory limitations as to "one subject," etc., did not the convention intend that such should be the test as to the validity of amendments? Did it not in limiting amendments to one article mean the *subject* of that article and not merely the *form* of it.

The first answer which arises in answer to this is another question, viz.: If it meant it, why did it not say it?

And this becomes infinitely more important when we are applying a *strict construction,* which must never be forgotten for a moment.

The word "article" might as well be "division" or "paragraph." It is itself a form. To change an article of the constitution is to amend a thing of form. To amend is "to change the form of." We have therefore nothing left but form. The form or heading is as distinct from the subject as a fence from the cattle in the field or from the patch of earth which it encloses.

A direction that the fences around one field only can be changed at a time does not mean that no new ground can be taken in, or that soil of a different character must be excluded.

But let us for the sake of argument assume that the subject-matter of our amendment must be "germane" to the subject of the article, then the question comes up: Does "subject" as here used mean only the first heading

of the article, or does it mean any of the varied and subdivided subjects in each section or each sentence thereof? If it means the latter, it is easy to see that the constitution may be said to be divided into as many subjects as there are sentences.

But any one who attempts to look upon the constitution as composed of separate items or as a collection of separate objects as he would view a bundle of fagots, will not hold his conception long. Subjects if looked at long enough seem to fade into each other, like the waves of the sea. For one instant they seem distinct, but in the next they have disappeared. In covering the field of general public welfare the constitution reveals divisions like waves upon the sea; as something is put into the constitution and drawn from it, it in a measure unsettles parts other than the sections actually changed. To say that you shall not disturb one wave by drawing from another is to say that you shall not touch the constitution at all.

But we will not have to meet the question of whether or not the supposed rule of germaneness is to be tested by the "heading" subject or by the minor ones specified in particular. For we are dealing with a *county;* and *"counties"* is the heading of the article under which this amendment is placed. And it cannot be said that Cook County cannot be validly treated under that heading, because it has already been so treated. Section 7 of such article provides how the "affairs of Cook County" shall be managed. Section 9 creates special offices for Cook County and makes special provisions applicable thereto. Hence "Cook County affairs" is germane to the article on "Counties," because in treating of such affairs we are treating of a county; secondly, because the consti-

tution-makers themselves have set the example in treating them as such; and, thirdly, it is germane to one of the specific subjects in said article, because—well, because such *is* one of its subjects.

The only question left, therefore, is: Is this amendment and its specific provisions germane to "the affairs of Cook County?"

A division of Cook County and a consolidation of a part of Cook County with cities and other municipalities in it is the primary object of this amendment. There is no special article in the constitution upon "cities." If it is proposed to consolidate the county with the city (wholly or partly), it is just as appropriate to put the amendment under counties as it would be to put it under "cities," if there *was* a special article thus labeled. Anything that is fairly germane to a scheme of consolidation or *a division* of the *county* could be as appropriately placed under counties as under any other article — it would still be germane to the subject treated.

The provisions for submitting the consolidation scheme to a vote, the directions as to providing county government in the remaining territory, and the provision for an increase of debt of the City of Chicago (in order to correspond with the increased functions thrown upon said city by the adoption of the scheme) are all absolutely germane; and this without question.

The provision for abolishing justices of the peace and constables in said city is likewise so, and for this reason: The jurisdiction of justices and constables now extends throughout the county, namely, over *both* a city and country district. If the county were divided it would extend only over a *city* district. Every one concedes that

this petty judicial system is *not* well adapted to such a district, that is, every one advocating their abolishment—and this is a legislative question which the courts cannot inquire into here. Every one likewise concedes that it *is* well adapted to a country district. There might be doubt as to whether or not you would abolish justices of the peace when their jurisdiction extended over a "fit" district and an "unfit" one, but no question about it when it would simply cover the latter.

The same is true as to the provision in respect to the districts where selling liquor is prohibited. The constitution-makers might validly provide, in their wisdom, either that in the consolidated city there should be no liquor-selling or that it should not extend into the districts at present free from it.

But there is still another conclusive reason why the various features of this amendment are all germane to the subject in hand, viz.: This amendment covers *a territory,* viz.: Cook County. No matter whether it were headed or labeled "Provisions for the local government of the territory now comprised within Cook County," or "Cook County affairs," or "Cook County," there is scarcely anything that is local to that *territory* or any *part* of it, that could not be put therein; or anything that could be *made* local or special to it.

In providing for annexation or consolidation, it is proper enough to except in the act certain functions or territory which would otherwise be included. It is just as appropriate to reserve liquor free districts as to provide special limitations as to the character of the buildings in annexing a populated district to a city. An act of the legislature annexing Hyde Park to Chicago and providing that certain building regulations of the city

should not be in force in the annexed district, or that the city election law should not be used therein, might be held bad as special legislation, etc., but *never* on account of having two subjects, or because the exceptions were *not germane* to the act. As well say that an act granting a forty-acre tract to be appurtenant to the executive mansion, excepting that four acres thereof were to be used for temporary hospital purposes, was invalid for this reason.

Supposing, after the providing for the bill of rights and the frame of government and state officers and general state-wide interests, etc., the constitution had made districts throughout the state for all local government, as they did in several instances for judges, etc. In such case anything relating to courts, clerks, sheriffs, special assessment and finances, etc., peculiar to *each* district could appropriately and "germanely" be placed under the article or section relating to such district.

The suggestion, however, comes up that if you do this by amendment, you might be radically repealing or clipping down provisions of other articles. But we are not concerned with this, for we have already shown that we can thus repeal, expressly or impliedly, and it is immaterial whether we repeal much or little.

Hence, the conclusion is, that even under the rule of "germaneness," "Cook County affairs" has been specially made by the constitution, or Cook County has been specially singled out by the constitution, as a *district of its own* which can be separately treated. And that being so, *there is no limit* to what may be validly put in the constitution so long as its operation is confined to that county or any of its parts.

If this were a statute, the provision in regard to non-

liquor-selling districts or a similar provision could validly be placed in the article on "cities, villages and towns," and in a section providing for "change of boundaries," or "consolidation of cities," etc.; and there is no question but that the courts would construe it as a valid part of an act so labeled.

Upon this rule of germaneness, even as applied to statutes, the courts give a very wide and liberal interpretation. To do otherwise would simply be narrowing the legislative field to a succession of channels and crevices in which it could flounder around and do little or no good. To place it in the constitution and then narrow it would be a definite challenge to the state to grow; but in the *growing* do not *change*.

Nor can it be said that even though this limitation upon amendments may greatly hamper the people in making constitutional changes, yet the convention-framers provided for a convention which could give all relief wanted in any case, and hence intended the limitation to be narrow.

But the fact that these men *provided* for both amendments and convention does not change the *nature* of either, or cause the *power* to make amendments to be less vital; or make the convention a less radical or crucical expedient (or, as in the case of a "going" state, a less *unnatural* one).

This supposed rule of germaneness obtains nowhere else than in such states as have a similar provision to ours in the constitution. And all such express provisions apply to *statutes only*. Had such a limitation on statute-making never been inserted in our constitution, no one would dream of raising it here- It is the *habit* of testing *statutes* by them which we carry with us for the time

being when we approach a study of this plank in the constitution.

We must rid ourselves of this and see that the field for constitutional changes is *naturally* as broad as it ever was; that to attempt to contract it in the manner claimed would be a serious matter. That any attempt at doing so must be strictly, *very* strictly, construed. And it is hard to see how under an *ordinarily* strict construction we can drag this modern and unexpressed rule into service.

It is at the vital points that language is usually uncertain. But we must not in a laudible desire to attribute a purpose to language, hold to the language and forget the vitals. The convention-makers probably never studied carefully to see how far limitations upon amendments might reach. If they had, they probably would never have attempted anything so strict. However that may be, we will give force to what they expressed and eliminate the rest.

III.

The limitation as to amendments in question here do not apply to the portions of the constitution other than the articles; and do not prohibit adding new articles to said instrument.

1. We have above referred to the "separate sections" of the constitution which are set forth in the body of the instrument, but which are not part or parcel of any "article" therein. They are, however, as much *a part of the constitution* as any of its articles. Said sections were originally three in number, one relating to the Illinois Central Railroad; another to prohibition upon subscriptions by municipalities to railroads and other private corporations; and the last, to the Illinois and Michigan Canal.

A fourth in respect to "convict labor" was proposed *by amendment* and adopted by the people in 1886. There is no prohibition in the article on "Amendment" against adding "separate sections" without number to these four; and the subject-matter of any added sections might be as varied and incongruous as that of the four already in the instrument.

A "separate section" or a number of them in reference to a new county to be called the "County of Chicago" and containing whatever was pertinent to municipal affairs therein to be added by the amendment method could not be called unconstitutional. There is nothing which can be pointed to to prove it so.

2. So too as to the "Schedule" of the constitution. The ordinary function of a schedule to a constitution is to

make provision for its taking effect and to save rights from lapsing and to prevent inconvenience, etc., during transition from the old to the new order of things.

Yet it has frequently been used also as a sort of scoop to gather up at the pre-adjournment session a few matters of vital import forgotten by the convention while framing up the main body of the instrument. Jameson after remarking (Constitutional Conventions, p. 96) that such vital provisions have no proper place in the schedule, says: "It is more perhaps a sense of logical completeness and order than substantial propriety which is offended by such provisions." (There is here not even the suggestion of *invalidity*.) "But if a schedule is a proper subdivision of a constitution it should be, not in the nature of a labor-saving postscript, made at the expense of clearness and finish, but of an appendix, in which to gather provisions of a temporary and miscellaneous character, related to the instrument in the main only as subservient to its general objects."

Now the schedule of our present constitution has in it this provision:

> "Sec. 24. Nothing contained in this constitution shall be so construed as to deprive the General Assembly of power to authorize the City of Quincy to create any indebtedness for railroad or municipal purposes, for which the people of said city shall have voted, and to which they shall have given, by such vote, their assent, prior to the 13th day of December, A. D. 1869. *Provided,* that no such indebtedness so created, shall in any part thereof be paid by the state, or from any state revenue, tax or fund, but the same shall be paid, if at all, by the said City of Quincy alone, and by taxes to be levied upon the taxable property thereof. And, *provided,* further, that the General Assembly shall have no power in the premises that it could not exercise under the present constitution of this state."

This provision is as much a part of the constitution as any one of the fourteen articles. It could, as well as any one of such articles, of course be amended.

Suppose a provision relating to a special charter for the City of Quincy were framed, voted on and adopted, which purported in form to amend this section, changing a part of it and adding much to it. Would any court pronounce it invalid?

Or suppose an entire new section be added to such schedule, in reference to the "City of Chicago"—it would be as appropriate as to place the affairs of Chicago in the schedule as those of Quincy—why would it not be properly and validly a part of the constitution?

If it conflicted with other sections the latter to the extent of such conflict would be repealed.

The rule here, as in statute law, is that later provisions (that is later adopted provisions) prevail over and repeal earlier ones inconsistent therewith.

6 Am. & Eng. Ency., 2d Ed., Vol. 6, p. 927.

3. Or suppose, as was suggested by a late editorial in the "Chicago Evening Journal," that it was thought best to add a new and complete *article* to the constitution in reference to "Chicago." What warrant would there be for a court declaring it invalid?

If permissible to add new articles to the constitution (and our friends have nowhere pointed out an inhibition against it), there is no limit as to what shall be inserted therein, whether it is strictly new matter, as, for instance, an article on "Labor and Capital," or in addition as many subjects as might be desired, and as variant as the contents of the "Bill of Rights," the "Separate Sections" or the "Schedule."

Conclusions.

Our conclusions, given out in thorough confidence, are:

1. It is clear and settled beyond controversy that the provision ts to amending one article at a time is a limitation upon the power of the General Assembly; and that all such provisions are to be construed strictly. This provision is even more than such a mere limitation, viz.: a limitation upon the *making* of limitations by the Assembly and a curtailing of the power of the people *over themselves*. There is not the slightest warrant, therefore, for *extending* by construction the provision *beyond* its plain language.

2. The only expressed limitation upon amendments which may be proposed at one session of the Assembly is that they shall purport *to amend* (*or "change in form"*) but one article.

3. There being no expressed requirement that all such amendments shall relate to but *one* subject (as in the case of statutes) such amendments may be variant in subject-matter if the Assembly shall choose to make them so.

4. Nor can it be said that by implication or inference it was intended that amendments to one article should be germane to the "subject" of that article; for

1st. There is no declaration in the constitution *establishing* a given "subject" to each or any article.

2nd. Nor is there any uniform *plan* or *arrangement* extending throughout the 14 articles from which one distinct "subject" to each article is to be inferred; for

a. The "headings" to various articles are only

labels for convenience; and in some articles there are a number of them of equal prominence in size of type, etc.

b. Some of the articles are quite variant in subject-matter—have several "subjects"—and some of these are not distinguishable from subjects in *other* articles.

5. Even if there were such a requirement as to "subject" and "germaneness," etc., yet there is no prohibition against an amendment to one article amending any *other* article or its provisions. (Such a one would be probably too stringent to be sustained by the courts if it existed in form.) To "imply" or "infer" the latter would be causing constitutional changes with *no* such expressed prohibition to be far more narrow in scope than statutes with the two *expressed* prohibitions referred to above.

6. To "imply" or "infer" broader limitations than the ones expressed in the constitution, might lead (we might even say *will* lead) to disastrous or distressful results, the intention to foster which is not to be attributed to the framers of the constitution.

7. The amendment heretofore proposed by the Civic Federation is, however, "germane" to the subject "Counties" the heading of Article X under which it is placed; and it is also germane to one or more of the specific subjects treated in said article, being in fact one of them, viz., "Cook County affairs."

8. Such an amendment could be added to the "separate sections" of the constitution with no danger of its being held void; or

9. It could be inserted in the "Schedule" with equal safety (although it would be oddly placed in such case); or

10. It could be as well embraced in a separate "article."

PART II.

As to the vital nature of the power of amending State Constitutions; and suggestions showing why limitations thereon should be subject to strict construction.

It is thought that the above and foregoing suggestions are amply sufficient to support of the conclusions reached. But the following is added by way of confirmation and added emphasis.

It was asked in the "Journal" editorial above referred to and has often been asked, Has one generation the power to bind another in this manner, *i. e.,* by limiting the power to change the constitution?

In one sense, no.

The state exists. With no constitution whatsoever it would still exist. But it could only continue to exist under some organization which would be tacitly accepted by the people, or forced by sheer military power. As the state has existed now for over three-quarters of a century in such case it would no doubt be held that by force of custom alone it was radically constituted by and divided into the three chief departments, each with the powers long attributed to and exercised by it.

So, too, the bill of rights and all fundamental rights of citizens as enjoyed by them for centuries would no doubt be upheld by common consent and enforced by our courts as imbedded in our state polity and as belonging to citizenship itself.

Mr. James Bryce, in his work, "American Commonwealth," says (p. 464):

"One could well imagine the several state governments working without fundamental instruments to control them. Each American state might now, if it so pleased, conduct its own business and govern its citizens as a commonwealth at common law, with a sovereign legislature whose statutes formed the highest expression of popular will. It might retain the separation from the legislature of the executive governors elected by the people, and exercising his veto on their behalf, and yet dispense altogether with a rigid fundamental constitution. This, however, no American state does or has ever done, or is likely to do."

No matter how vital any proposed change might be the people themselves should have the power to make it when they thought it advisable.

It will be said that the amendment provision under consideration above does not purport to limit the *power* of the people to make any change whatsoever, but only provides a *method* therefor.

As a method pure and simple there is no objection to it. But when there is, as here, a limitation upon the actual *use* of the method, this may amount to a limitation of the *power* itself, which possibly could not be tolerated under come circumstances without danger to the state.

The requirement that amendments shall be proposed by the Legislature and voted upon by the people suggests a natural and proper method.

Anticipating that it *might* never be necessary to call a convention (and wisely as we think) a method was provided for amendment.

This was proper, not as *necessarily* depriving the people in their sovereign capacity of the right to adopt con-

stitutional provisions in any other manner in *any case* or *in any exigency,* but as directing and furnishing a method which could be pursued without affecting or endangering the peace and tranquillity of the state while the vital subject was under treatment or until the people had formally expressed themselves upon it, and which method should be pursued where it was practicable.

Some will say that the constitution framers might naturally have seen that by their limitation upon amendments such progress of making changes thereto would be very slow, but that they deliberately intended it that way, and that if the way were not fast enough to suit the changing conditions of the people then it was intended to drive them to resort to a "convention."

But conceding the power of one convention to bind the people to such methods or to drive them to *another* convention this suggestion does not look tenable.

For it is hardly to be presumed that these men intended that periodically all the organic and fundamental law of the state should be wiped out or dumped into the hotchpotch of debate to be again agreed upon, voted upon and re-declared.

We cannot construe the said provision without recognizing the nature of the instrument or subject-matter to which it relates.

If the proposed construction of an amendatory provision such as the one we have above treated would lead or *might* lead in and of itself to harmful results and statewide disaster, or the uprooting of the vital principles of government and its organic law, either one or the other is a conclusive argument against it—especially where every word can be given effect and such a result avoided by another construction.

The suggestion that "one generation should not be allowed to bind another" should, however, be explained and guarded in application. Nothing should be done by one generation which should bind a succeeding generation against its protest. The succeeding generation is supposedly as fit to judge all vital matters which affect it as the preceding one; and in fact if mankind is really progressing toward the better it should be more fit. History has its value and in considering the making of vital changes it should be paid venerable tribute and the experience of prior generations should be given great weight. But such later generations have no inherent *right* or *control* over succeeding generations or any one of them.

But it does not follow that because this is so (that because each generation of a state should have *control* over its constitution) that the way is open at any time for a change therein in any manner whatsoever.

It can well be said that it is not to the interest of one generation to be born into a state of technical or actual anarchy in regard to its constitution or laws. The duty and the privilege of the prior generation to transmit to the succeeding one a stable and peaceful state under which the latter may come upon the scene of life is clear. And this being so, reasonable methods, forms and limitations which are prescribed by one generation of citizens of a state within and according to which the fundamental regulations or laws shall be changed are proper and necessary safeguards of "peace and tranquillity." The constituted bodies in authority should therefore observe them.

If, therefore, a constitution of a state deliberately planned and regularly accepted provides that there shall be no amendment thereto, or change therein, except in a

certain method and within reasonable limitations, such forms and methods should be observed, and that department of state whose constituted function is to see that laws are followed should have the right to enforce obedience to such methods, or to declare departures therefrom null and void.

But it must not be forgotten that such limitations should be *strictly construed.* And where they apparently conflict with the orderly development of the state, and bear heavily on the public welfare, and prevent progress, and invite anarchy or chaos, *then* they should be construed either as being null and void as applied to the issue *then* presented, or the latter should be treated as a police measure, a measure of necessity, and outside and beyond the scope of such provisions. In this way peace and the stability of public affairs may be preserved. The very object of such provisions would be thwarted in pursuing another course.

The necessity of an elastic construction of constitutional provisions is thus apparent. The professed object underlying such regulations, and which call them into existence, might be furthered in one case and with one construction or application, while by the same in another it would be thwarted and rendered null.

It may be said, however, that it does not follow that the strictest adherence to amendatory provisions, even if these were slow and burdensome methods, would drive the public to such state of chaos or anarchy, technical or real, but that it would only force us to have a constitutional convention.

Is the constitutional convention the preordained style of body or form of expression through which any generation of people are bound to express assent to or dissent

from changes in their organic law or frame of government? If one generation cannot tie the hands of a succeeding one or put limitations upon their *power* to change their fundamental law, has it the power to decree once and forever that a certain method through which this can be done shall be the *only* one? Has it the power to say that assent by the electors of a commonwealth to a provision or any number of them can *only* be given after such provisions shall be framed and submitted to them by a certain body of men or by a body constituted in a certain way?

Had there been no conventions of the American states at the time of their organization or their coming into the Union, it is quite possible that constitutions might have been adopted by them through some election proposed by anybody, or any set of officers or persons in actual authority or without authority in the territory at the time. But if the election was actually open to all the electors of the state and a majority favored the adoption of the constitution, and all of the departments of government provided for therein had been put in actual operation, would the courts declare it null? Would they commit suicide, or as a member of the tripartite state government invite it?

History furnishes many examples of a state of peace occurring to an unorganized society, and of laws and regulations being imposed thereon and accepted thereby. A convention is only one of them. It is, however, well and naturally adapted to the construction or creation of a state; and in fact until the state shall have become so diseased as to need practical re-creation, we can see no other use for it.

Supposing measures amending the constitution were presented by the General Assembly and voted on and

adopted by a majority vote of the people cast at an election regularly held by the election officers of the state and under the forms in vogue, would the judicial department of the government be authorized or empowered to declare it null? Such a measure might involve the peace and stability of the state. There might have been no time for the slow process of a constitutional convention, and a submission of its work to the people for a vote. There might be ultra-stringent methods required by a constitution and it might take six or a dozen years to obtain an expression of the people upon a submitted draft of a new constitution; and it in any event would require the throwing the whole body of organic law into technical chaos and confusion.

The state should not invite self destruction, nor should any of its governmental departments do what would invite or threaten it. If the legislature were proceeding to submit an amendment to a constitution in a way different from a form prescribed by that instrument, and the administration officers of the state were proceeding to hold an election in consequence thereof, the court might enjoin the holding of such election. But the courts would act in such case, not by virtue of any inhibition in the constitution that no *other method* could be pursued in *any* case, but that the directory requirements in said instrument should be followed, where not *impracticable,* or not gravely menacing to the state's welfare, and that in the specific instance then being considered it was practicable to follow them.

But all this would simply seem to show that of necessity the invitation for the courts to interfere must be a matter of *discretion* or must be limited to cases where full relief could be given the public by pursuing the slow and technical methods pointed out in the constitution.

We learn from Jameson that the legislative mode of changing the constitution is about as common in America as the convention mode, that "they are of about equal antiquity and about equal authority." (p. 551.) We think the former by far the "most natural" and orderly method which Jameson concedes it to be; and we can not see why limitations upon the use of such a method are not as illogical as similar limitations upon a convention would be. We will refer later to this subject.

What is the proper function of a constitution?

The Bill of Rights sets out certain individual rights which it declares shall never be infringed, and which by common acceptance are the heritage of the people and proved by the sacrifices and contests and mutations of history to be necessary for human progress. The Frame of Government provides for the organization of the state and its chief departments, etc. These about mark the limits of the proper scope of such an instrument.

If the frame of government had been long established and by common consent recognized as permanent, the bill of rights would seem to be sufficient.

If rights preserved by the latter article had likewise by common consent been accepted and established through long usage, it would seem that such article also would be superfluous.

It is barely possible, therefore, that a day will come when carrying along provisions of such fundamental character upon the statute books and other public records, will be deemed a useless burden and such documents be treated as so much "dead timber," possessing little more than historical interest. This by reason of their essential and conceded permanency.

We do not mean by this that the provisions will be less vital or come to be thought of as not important; but that through long continued usage in protecting such rights, and by a public habit of recognizing them as vital, they will become such an essential part of our public life that the probability of their infringement by the legislature or other public agencies will be ultra-remote and scarcely thought of.

When one looks, therefore, at the modern constitution of an American state and witnesses that nine-tenths of it is mere legislation or "mechanics" or method, and but one-tenth of it fundamentally vital in principle, it does not look at all like a very benign or logically fit document. Considered apart from the actual experiences of such states with these many featured limitations (many of the latter of which have become like fangs in the body of the corporate public), the instrument itself looks cumbersome and grotesque.

It is therefore a relief to find that in one American state—Virginia—the first constitution was simply a declaration of the bill of rights; and that the broad and simple Massachusetts constitution of 1789 is, with however many and various amendments, in force to-day.

We do not here, of course, advocate the immediate doing away with all things in our constitution, except the bill of rights and the frame of government. A tendency exists on the part of the very best of legislators to frequently disturb things without a sufficient warrant therefor. While the English parliament (whose power of legislation is practically unlimited), has eventually been brought up to a condition where there is little danger of disturbing matters of vital and

permanent interest, our legislatures in America are prone to do so with very slight demand or urgency therefor. It takes considerable brains, much experience and some moral courage to escape an occasional "tinkering" with vital things.

Some "mechanics" might be safely lodged in the constitution if they were such as it were clear would not have to be frequently changed.

But the power of amendment, or change of such provisions should indeed be broad, and the people should be untrameled in respect thereto, except that reasonable provisions to restrain their being submitted at every pretext should be appreciated and upheld.

The requirement that two-thirds of each house of the assembly must assent to a proposal, and that the majority of the electors voting thereon shall favor such proposal, is limitation enough upon methods of procedure.

Our present constitution consists of about 200 sections, some of these many featured and complex. The points in which its limitations bear upon public progress, need not be scheduled here. But the safer practice will be to remove those which are superfluous only as they are found to block the path of progress; and it will probably be a long time before Illinois, as well as the other states, get back to a *real* constitution.

There have been so many state conventions in America that we have acquired a sort of "convention habit," as it were, and we have partly lost sight of the radically disturbing nature of such a body.

Its proper function is constructive. It is properly occasioned only to a state of unfounded or unformed society or actual or technical anarchy.

This "habit" has even dulled the eyes of American writers upon constitutional law, and they fail to note the essential gravity of such a thing.

Judge Jameson, writing thirty years ago at Chicago, speaks of the convention as now "a part of our common law in America." In treating of the validity or invalidity of conventions, he is quite firm in advocating that the methods in the original constitution for amendment or for calling a convention should be firmly adhered to.

In this latter he is correct. But it is thought that the process of amendment of a constitution proposed by the legislature and voted on by the people at large, which he in another place says is the "natural one," is as much a part of the common law as conventions.

The exigency where forms prescribed by the constitution for making changes therein either through amendment or convention are found to be onerous and threaten the welfare of the state and its continued existence is not, as we think, treated accurately. Any departure from these forms, no matter whether or not the method pursued is provided by the legisalture and decreed by a vote of the people themselves, is treated by Judge Jameson as "illegal" and "revolutionary."

In referring to acts which are done without law or against law, to save the existence of the state, "to save that for which all laws are made," he says, p. 102: "Such acts are nevertheless to be classed as revolutionary. The moral character to be affixed to them, however, is to be determined by the degree of their necessity. * * * Such acts may, under some circumstances, be necessary or justifiable to preserve life."

These observations, however, do not touch the case mentioned above. For acts such as he mentions there is no legal warrant whatever.

But *from* the "necessity to preserve life" the courts may conceive and declare as *matter of law*, that it could not have been intended to *take* life, or that if it was so intended there was no *legal* warrant therefor.

How deep down into the vitals of state life reach the provisions for revision or amendment of their constitutions is shown by the history of the American states.

The Deleware constitution provided that there should be no change in certain vital provisions therein whether by amendment or convention revision, without a vote of at least five-sevenths of the "assembly," and seven-ninths of the "council," which two houses constituted its legislature.

The state needed a change, and needed it badly, and it was impossible to get the requisite unanimity of opinion thereon or the requisite number of votes therefor in the legislature.

Thereupon said body, reciting the said impossibility and the necessity for the change, etc., etc., by a *majority* vote of its members, provided for an election of delegates to a state convention to be held for the purpose of revising the constitution. Such delegates were elected, and the convention was called and revised said instrument, changing said vital provisions above referred to, and the new instrument went into effect. It was not even questioned that it was valid, and the people acted under it from the start.

A similar action was taken in 1850 in the State of Maryland. The constitution of 1776, then in force, Sec. 59, provided that neither the Form of Government nor

the Bill of Rights, nor any part thereof, should be altered, changed or abolished "unless a bill so to alter, change or abolish the same should pass the General Assembly, and be published at least three months before a new election," etc.

After violent contests between the friends and enemies of a reform of the State Constitution, an act was finally passed in 1850, in direct vioaltion of this provision of that instrument, to call a convention, the result of which was the election of such a body, and the adoption by it of the Constitution of 1851.

Evidently the people of the state in each of these instances never thought that they were undergoing a silent "revolution," which Jameson is pleased to term this episode. Common sense apparently prompted them to assume that if there were such inhibitions in the letter of their constitution, as in a given case would absolutely prevent their progress or relief from intense internal evil, and throw them into anarchy and chaos, it was but reasonable to believe and act upon the belief that such prohibitions were never meant to apply to such an extraordinary case; that they must be read with the implied modification that they were to apply in all cases when not impracticable for the welfare of the state, or when following them would not imperil *the existence* of the state.

Between such a construction (not uncommon, by the way, in construing statute law in "police power" cases), and the technical rule of following the letter in *all cases*, lies all that lies between order and chaos, sanity and insanity, existence and death.

Is it, then, hard to choose between them?

There is also an instance where the *amendment* plan was adopted in a manner without affirmative constitutional warrant therefor.

In Kentucky (in 1891), after the draft of constitution which a convention had prepared had been submitted to and accepted by a popular vote (as provided by the statute which summoned the convention), the convention met again and made some alterations on which the people have never been asked to vote.

Proceedings were taken before the Court of Appeals of Kentucky to determine the validity of these alterations, and the court by a majority upheld them, on the ground that the legislature and executive had treated them as operative. The matter is further complicated by the fact that something similar had happened in 1850, when the last previous constitution was adopted, and that that constitution did not, like the statute which created the convention of 1890, prescribe a popular vote.

The doctrine of the Kentucky case was the same as that on which courts uphold the organization of municipal and other public bodies, which, though without technical legal warrant, have been recognized by the legislature or the public at large, and been widely acted upon, and to upset or destroy which would operate to the loss and confusion of the public at large, or any considerable portion of it.

These three instances are quite distinct in character from another which happened in Rhode Island in 1841. Vital constitutional changes, as in the other two instances were badly needed.

Upon repeated failures and refusals of the assembly to act, a "spontaneous" convention was called by a number of citizens, which convention called upon the people of the state to elect delegates to a further convention to be called to frame and adopt a new constitution for the state. An election was held, the delegates elected assembled.

prepared a new constitution and adopted it, prepared for holding elections under it for a governor and members of assembly, etc., etc. The so-called assembly was elected, met, passed some laws, and the "governor," one Dorr, attempted to act as chief executive officer of the state.

Upon a test the state Supreme Court held the so-called constitution void, as well as all acts done under it, and the Supreme Court of the United States affirmed the judgment. *Luther* v. *Borden,* 7 How. (U. S.), 19-27.

In this case, however, in calling upon the people to act in the matter of electing delegates and adopting the so-called constitution, etc., the state was not speaking through its appropriate and authorized speaking organ, the legislature. The new legislative body, governor, etc., had been created and were acting in *opposition to* and at war with the state's lawful and existing organisms.

It was clearly an act of revolution, and held to be so.

Judge Jameson safely classes it as such. But to the Delaware and Maryland cases he also applies the same character, and in this we think he errs.

For, there the state was acting through its *lawfully constituted organisms* to change limitations upon its progress, to save itself from chaos and anarchy.

The "prior generation" in bringing into life the child of the state had made a decree which meant or threatened it with death, if construed literally, and if *no exceptions whatever* were made in its application.

The change in each instance was accepted by the whole public without question—itself strong evidence that such a proceeding was legal.

But the logic to support it was twofold, viz.:

First, it could not have been intended by the state organizers that it should be disrupted and broken up; and hence any provision framed by them would be so construed as to except a case which threatened such a crisis or result.

Secondly, in bringing the child of state into life such parental generation, while having power to environ or control it, *had no power to decree its death;* and to such extent such provisions were inconsistent with the very act of state formation, and void.

Says Judge Jameson, p. 597:

> "Attempts, as I have said, have been made to defend this action of the States of Delaware and Maryland on legal grounds. In the case of Delaware the legality of the course was distinctly asserted by Mr. Bayard, the senator from that state, in a speech delivered in the senate of the United States in 1858, upon the Lecompton Constitution, * * * the broad principle being asserted by him that *a majority of a people* could not be restrained by constitutional inhibitions from changing the fundamental law when and as they pleased. The reasoning, in brief, by which this remarkable proposition was sustained, was comprised in these political axioms, resulting, as he claimed, 'from the nature of man'; first, that all powers of government rest ultimately in the people at large; secondly, that *a majority* of those who choose to act may *organize* a government; and, thirdly, that the right to *change* is included in the right to *organize*, and may in like manner be exercised at any time by a majority. * * *
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> "So, in reference to the Maryland case, the Hon. Reverdy Johnson, United States senator from that state, is a late letter respecting certain proceedings of the Maryland convention of 1864, said: 'No man denies that the American principle is well settled that all governments originate with the people

and may by like authority be abolished or modified; and that it is not within the power of the people, even for themselves, to surrender this right, much less to surrender it for those who are to succeed them. *A provision, therefore, in the Constitution of any one of the United States, limiting the right of the people to abolish or modify it, would be simply void.* And it was upon this ground alone that our Constitution of '76 was superseded by that of '51. The Constitution of 1851, therefore, rests upon the inherent and inalienable American principle that every people have a right to change their government.' Subsequently, referring to this principle, he says: 'In its nature it is revolutionary, but, notwithstanding that, it is a legal principle.'

"Two points involved in these extracts deserve consideration:

"1. The right is claimed for the people to establish and to change their governments at pleasure—a right which cannot in general be denied. But who are the people? In the true sense of the term it means the political society considered as a unit, comprising in one organization the entire population of the state, of all ages, sexes and conditions. Unquestionably it is the right of the people in this sense to found its institutions and to determine how they shall and how they shall not be abolished or amended. Having ordained the mode, however, in which changes therein may, and in which they shall not be made, clearly no mode can be *legal* which contravenes the express letter of that fundamental provision. The society has, it is true, the physical power to override its own restrictions. But such an act would most certainly be illegal, because in violation of the letter of the law. Even were the whole people, by unanimous action, to effect organic changes in modes forbidden by the existing organic law, it would be an act of revolution.

"2. That whatever the people are authorized to do, a majority of them may do, is generally true—by the term majority meaning the greater number. But it is important to determine the stage at which

the proposition holds good. Nature knows nothing of any majority but that of force. Anterior, then, to any positive institutions, and this side an appeal to force, nothing less than the whole can rightfully bind the whole. It is only when a political society, with positive laws and compacts, has been established, that the whole can be bound by the action of a number less than the whole; and the number to which shall be accorded the power to act for the whole, and the conditions under which it may so act, are matters of positive regulation in which alone they find their warrant. From this it is apparent that a mere majority in number of all the citizens of a state or of the electors of a state have no right whatever to act for the whole state unless they can point to authority to that effect, express or implied, in the Constitution of the state; and that if the action taken or proposed by such majority is palpably in the teeth of a constitutional provision, it is usurping and revolutionary. This, it will have been observed, was admitted by Senator Johnson, in the extract given above, although, it is true, that eminent lawyer gave utterance to the astounding paradox, that the action of the Maryland convention was at once *revolutionary* and *legal*—a contradiction which we have a right not to expect from a man occupying the high position of a senator of the United States, not to say, of the foremost lawyer in the Union."

But between these two views there lies a middle ground, viz.:

It is not a right of the people *at all times* to change their fundamental organization upon the expressed will of a majority acting for the whole. The regulations for *changing* the *organization* are valid.

But if they amount to *destroying* it, or if necessary *to preserve* it, resort can be had to the common law rule—the rule of necessity—that the majority of the people should have the right to alter or change it.

Many state constitutions contain this latter as a fundamental *principle* of American law. This, of course, means as a *legal* principle.

Thus modified, and as applied to the action of Delaware and Maryland, Mr. Reverdy Johnson's declaration that such right (*to be exercised in such an exigency*) is a legal right, is understandable; and we think that the great lawyer's conclusions were sound, and the learned author's erroneous. Mr. Johnson meant only by his quoted expression that such acts were *radical,* or convulsive or strenuously exertive, in such sense "revolutionary in character." He may have been technically inaccurate in referring to a legal act as practically "revolutionary." But we are more concerned with his conclusions than the phrasing of his argument, and these we think are sound.

Judge Jameson, in discussing the character of resolutions proposing amendments and *requiring* a state vote thereon, such as we have in this tate, concludes that they are "legislative" and not merely "ministerial."

As to "ministerial" resolutions for amendment, viz.: such as merely *recommend* amendments without requiring a vote thereon, or require a vote simply to take *the sense* of the people thereupon, etc., he gives as an instance a clause in the Massachusetts constitution, inserted by the convention of 1820.

The question was up whether it was proper to require more than a *majority* of each house to thus recommend amendments to the people. Mr. Webster gave as a reason in favor thereof that "This was not an exercise of legislative power."

And Judge Jameson, after quoting Mr. Lincoln in the same debate concludes by saying: "The aim of these

gentlemen was to show that in requiring *more than a majority* of the legislature or of some branch of it, to propose amendments to the constitution, *no principle was violated, as would have been the case had it been an act of ordinary legislation for which, by the common practice of all free governments, a majority is sufficient.* Being not an exercise of legislation at all, there was no impropriety in requiring a vote of two-thirds or of any other majority."

Judge Jameson thus reveals the vital nature of the principle of *a majority* rule, as applied to all free governments.

And the great "leak" in his argument is at the point where he says the action of a majority will be illegal unless "they can point to some authority, express OR IMPLIED."

We claim for the majority an implied authority *in the exigency mentioned.* An authority lying *at the base* of the existence of the state—deeper than its constitution—as implied from *the fact* or the making of a constitption.

In the Delaware and Maryland cases the people, the *sovereign*, spoke to themselves through the election. *Any* election at which the people actually voted would not necessarily be a *legal* one. But one held at the instance of the legislature, the authorized body for all such political and legislative acts, would be a different matter.

In classifying the five systems according to their relative rank in representing *sovereign powers*, Jameson (p. 24) gives this order:

1. The electors.
2. The legislature.
3. The convention.
4. The executive.
5. The judiciary.

In according this high place to the legislature he in fact tends to support the view that in the exigency of the state's *existence* being threatened the third, the convention, having no power to decree what may amount to dissolution, the sovereign, through its electors called to act by its legislature, both of them higher in grade than the convention, can orderly and *legally* decree otherwise.

The *legal* power to preserve itself is implicit in the state *as* a state; and its three organic departments must support each other in acts to that end appropriate to their respective functions.

What is implied from *legal* existence is not *illegal.*

In exercising this power the state, and in upholding it the courts, had the right to seize upon the common law rule of a majority being equitably and of right the voice of the whole body.

In referring, p. 241, to a claim in the Rhode Island constitution of 1842 to the effect that the constitution "should exist and be sacredly obligatory upon all *till changed by an explicit and authentic act of the whole people,*" he wisely concludes that this must mean the *majority* of the electors of the people.

It is thus seen how close to the heart of the state lie constitutions and the power to change them; and hence how wide a field courts must have in construing them.

In grants of power to its courts, in *constructive* provisions, etc., extrinsic aids may be resorted to and words supplied to give effect where the language used is vague.

In *limitations,* however, a strict construction will be applied. There is no better settled rule. There is as much difference between the two as there is between expansion and contraction or between

traveling east and traveling west. And when gross and widespread evils have sprung up within the state, and an acute disease can not be cured by applying the strict letter of such, an orderly decree of the state itself given upon invitation of its appropriate organ, should be sustained by the courts as a police measure necessary to preserve its very life, and hence *not contemplated* by such prohibitions, and *beyond the power of the constitution makers to prohibit.*

From some study of the question we conclude:

1. A convention is the method by which American states formed their government, their state *corpus,* as it were.

2. Such a corpus, upon being formed, was divided into three different members—executive, legislative and judicial.

3. The legislative is the natural and only one through which the people speak or move to change their organization.

4. Such move must be made in the manner provided for by the constitution, and the legislature must keep within its limitations, *excepting* when it is impracticable to do so, or the "peace and tranquility" of the state will be endangered by delay, or by attempts to follow such methods.

5. In such latter case the legislature can propose changes; and if the majority of voters (representing the sovereign power—the people themselves) vote affirmatively thereon, it will be *in fact* the decree of sovereignty itself, and should be sustained by the courts, as warranted under the circumstances,—as a measure *of necessity* adopted according to common law or universally accepted

methods,—as the only orderly and prompt way for relief, —as essentially a police measure occasioned by a situation *unprovided for* by the constitution—as a natural "last gasp." Such is not an act of "silent revolution," but rather the orderly decree of a sane state organism, that it will *not* throw itself into chaos and *be* "revolutionized."

6. For the assembly to refuse to speak in such a crisis, or the courts to sustain, and the executive to execute, would be just about as logical and natural as for a physically sound man to refuse to walk from the verge of a precipice, or as for one in the throes of death to refuse to breathe pure air about him.

8. It is not clear that the "convention" method has any better title than the "amendment" plan to being the "common law" manner for making such organic changes.

But, rather, it *is* clear that amendment is the *natural* or *orderly* way for a constitution to "develop" or "evolve;" and that in construing any limitations upon the methods or power of amendment, the strictest construction should be indulged, rather than drive the state to a "convention" remedy, opening up its whole organism to change or attack—a technical confession that there is little or none of such organism left to be held fast to—that democracy itself is a failure.

9. The doctrine of police power has been long established. In many instances laws in apparent conflict with the letter of constitutions have been sustained under this doctrine, viz.: As being proper police *or defensive* measures under extraordinary circumstances, as measures of *necessity* for the public welfare.

10. The extension or application of this doctrine to "constitutional" decrees, or that they must in appropriate cases yield to the orderly decrees of sovereignty itself is natural and legitimate. True, it may in such cases be

more far-reaching in effect and involve more responsibility by the courts; but, on the other hand, the parts of the organic body affected lie nearer the heart, and the greater risk would lie in their refusing relief or declining responsibility.

We do not feel called on to venture an opinion as to whether or not conditions in Illinois are so bad and the evils needing correction by changes in its constitution so many as to justify a resort to the method used in the instances of Maryland and Delaware, above noted.

For we believe that the conclusions announced as to the (at least practically) unrestrictive nature of the amendatory provision of the Illinois constitution are beyond serious question.

If one, however, were able to see accurately the many places where the provisions of such instrument bear heavily upon public health, economy and general welfare, and to approximately "size up" results, he might conclude that single changes as narrow in scope as we have been invited to make this one were out of the question if public calamity were certain to be ultimately avoided.

But the subject of greatly curtailing the power to change a constitution seemed to us to be more vital than is generally supposed; and there was thus a temptation to add these observations under Part II by way of confirmation and emphasis to the conclusions under Part I.

That a "majority should rule" in the exigency that no other action is possible to save the "peace and tranquility" or the very existence of the state, is admitted to be "a fundamental principle of legislation" and "the common practice of *all free governments.*"

And we believe that a profound study of this principle and the tracing of it to its logical source will reveal it

as a *legal* implication, and to lie safe and unassailable at some distance this side of revolution, "silent" or otherwise.

In the gathering cry of despair throughout the country at amending the Federal Constitution (when radical changes shall have become necessary) through its declared stringent provisions, it might be profitable to think of this as a possible way out; and to consider the historical precedents therefor in several of the states.

The annexed draft of amendment is the one last offered in the Assembly in 1901.

We concede that it has too much "mechanics" in it.

But these were dictated by the influences and conditions with which the Federation was beset, and accepted under protest. We hope that some of these may finally be dropped; and that a new and simpler draft embodying the main features be submitted.

But for the purpose of testing the specific question of whether or not varied or complex provisions can be validly placed in amendments submitted at one session the said annexed draft is probably as good as any other.

Respectfully submitted.

HARRY S. MECARTNEY, *Chairman.*
E. ALLEN FROST,
ROBERT MCMURDY,
} *Committee.*

CHICAGO, September 22, 1902.

Draft of Amendment.

(Submitted to Assembly of 1901.)

Resolved, by the Senate, the House of Representatives concurring herein, That there shall be submitted to the voters of this state at the next election of members of the General Assembly a proposition to so amend the seventh section of Article X of the Constitution of this state that the same shall read as follows:

Section 7. The General Assembly may provide for the consolidation of city, county, township, park district, sanitary district and other governmental functions, or a part thereof, within the limits of the City of Chicago or the County of Chicago, hereinafter provided for, or any part thereof, and no act providing for or amending such consolidation scheme, or relating to the governmental affairs of the City of Chicago, or such County of Chicago, shall be held invalid for violating any provision of this article of this Constitution, or any provision of Section 22 of Article IV of this Constitution relating to county, township or municipal affairs. Such consolidation scheme shall provide that a county shall be formed of the territory comprising the present City of Chicago and that part of the township of Norwood Park, which was formerly a part of the township of Jefferson, which shall be known as the County of Chicago, and shall also provide for courts and county government, and for fixing the county seat or seats for the remainder of Cook County, as in the case of new counties, by a vote of the legal voters thereof, and shall provide a just method of apportioning the debts and property of Cook County between the counties constituted or affected. Not more than two counties shall be formed from such remaining territory. Territory may be annexed to or separated from said County of Chicago in the method provided by this constitution and the general laws of the state, irrespective of the provisions of Section 1 of this article. *provided* that any change of county boundaries in violation of said section shall only be made by consent of a majority of the legal voters of the remaining portion of the county from which it is proposed to separate such territory.

No act providing a scheme of consolidation hereunder shall take effect until submitted to the vote of the electors of said Cook County, at a separate election to be held therefor, and ratified by a majority of the legal voters voting thereon, of the City of Chicago, and also by a like majority of the legal voters voting thereon of that portion of Cook County outside of said city, and any amendment thereto or any local or special law relating to the governmental affairs of the City of Chicago or the County of Chicago, shall be ratified by a majority of the electors voting thereon of the district affected before taking effect. Upon the taking effect of a scheme of consolidation hereunder, all the provisions of this Constitution relating to Cook County shall be deemed to apply to said County of Chicago. Until otherwise provided, the affairs of Cook County shall be managed as now provided by law.

The City of Chicago may be allowed to become indebted, in the aggregate, including existing indebtedness, not exceeding five per centum on the full value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness.

The authorities of such City or County of Chicago shall not be given power to permit the sale of intoxicating liquors in any district where such sales are prohibited at the time of the adoption of this amendment.

The General Assembly may provide for abolishing the offices of justice of the peace and constable within the City of Chicago or the County of Chicago, when established, and for the substitution therefor of other courts and officers.

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